

Democratic Government and Politics

BY

J. A. CORRY

*Hardy Professor of Political Science
Queen's University, Kingston*



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FOREWORD

THE last twenty-five years has produced a large literature on democratic government and politics. There has been much discussion of the growing activities of government, and of the changes made in the structure of democratic governments to carry the expanding functions. Further, the rise of the European dictatorships compelled a reconsideration of democratic creed and practice, and pointed out new lines of inquiry to be followed. As a consequence, there has been much stimulating discussion about the politics of democracy.

This discussion is scattered through many books and journals and much of it is wrapped in a technical idiom. So far, no introduction to it which is suitable for the Canadian student beginning the study of government has been made available.

This book is an attempt to provide such an introduction. Accordingly, it skimps description of the machinery of government. This can be found in compendious form in the standard works on government. The main purpose here is to provide some description of comparatively recent developments in democratic government and to sketch an analysis of the politics of democracy.

The book does not profess to be an original contribution to the subject. To have acknowledged my debts to those who have enlarged our understanding in the last twenty-five years would have overburdened the book with footnotes. I have refrained from specific acknowledgements and so need not apologize for misinterpretations of the work of others which have no doubt occurred.

A word of caution must be added. There is still much disagreement about political democracy, what it involves and the conditions under which it will work. But an introductory survey can scarcely suspend judgment on every disputed point. At many points, therefore, conclusions are stated more firmly than the literature as a whole will support. I have,

however, tried to give reasons for my conclusions. The conclusions, of course, are no better than the reasons offered in their support.

I have profited by the kindness of many friends who have read all or part of the manuscript. In particular, I wish to thank Professor R. MacGregor Dawson, the Editor of the series in which this volume appears, for his careful reading of the manuscript and for his counsel on many matters.

J. A. CORRY.

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CHAPTER I

INTRODUCTION

MUCH has been written on the differences between democracy and dictatorship, filling volumes with learned distinctions. It was left to a wit with no pretence to scholarship to state the essential distinction. In the democracies, he said, what is not forbidden is permitted while in the dictatorships, what is not forbidden is compulsory. That is to say, the democracies have been regimes of freedom. In the main, government in the democracies has been concerned to forbid and punish various forms of serious anti-social conduct and not to command a precise pattern of behaviour on all matters. Murder and wife-beating are forbidden. On the other hand, no one is ordered by the government to love his neighbour as himself or to produce ten children for the glory of the state. Even where the government commands people to do precise and specific things such as sending their children to school or submitting to compulsory vaccination, the professed object is to enlarge the freedom of the individual.

Government in the dictatorships not only has forbidden a wide range of actions; it has limited severely individual free choice by ordering the details of life from the cradle to the grave. While these minute regulations are explained to the individual as being for his own good, they enforce on him the dictator's conception of that good, and prevent him very largely from following his own. In effect, the regimentation is for the glory of the small ruling group, or, at any rate, for something other than the enlargement of the life of individual citizens.

If the ensuing discussion of democratic government and the comparisons made with the dictatorial regimes in the concluding chapter are to be understood fully, this distinction must be kept continually in mind. The structure of democratic governments is still largely determined by certain ideas which came into the western world with the

Renaissance. Briefly, these ideas exalt the individual and deprecate--sometimes excessively the collective restraints which society puts upon him through custom, law, and government. They do not reject all restraints. They recognize the necessity of some minimum of government. We all have impulses which must be restrained and we are never sure when our own inhibitions and our desire to be thought well of by our fellows will need to be supplemented by the threat, or by the actual use, of the organized force of the community. So there must be government and it must have the ultimate power to apply direct coercion to individuals.

This power to apply force must be a monopoly because to allow two or more independent centres of coercive power in a community is to create the conditions for civil war. But according to these ideas, this monopoly has grave dangers and government, though necessary, is a potential evil. Like fire, it is a good servant and a bad master. And it is always potentially master because of its monopoly of naked force. What prevents the government of the day from using the army and the police to enforce on us its conception of our own good is the knowledge that its power is contingent and may be taken away at the next election, and the further knowledge that if it pursues its own whims in these matters it will soon find itself violating the law which binds the government as well as the citizens.

It will be quickly and properly objected that the Lauriers and the Bordens, the Kings and the Brackens are not the clay from which dictators can be swiftly moulded. Here it is necessary to remember that a system of government attracts and chooses as its leaders the type of men who are temperamentally suited to work within its limitations. Mr. MacKenzie King perhaps could not have held power for long in any country but Canada and almost certainly would never have come to power in a dictatorship. The Nazis in Germany were encouraged to pursue power by violent means because of the prizes congenial to their taste which control of the government offered. Four years before Hitler came to power, the devices for assuring that government should

remain servant and not master had ceased to work and the country was governed by executive decree. That is to say, the riches of the earth lay open to those who could somehow get control of the government. When this happens, the power-hungry, the ruthless, the doctrinaire zealots who want to impose their conception of the good life on everybody are all attracted to politics as the bees to the flowers. But where the people are determined that government shall be servant and not master and the machinery of government is constructed to that end, the imperious are little attracted to politics and do not get far even when they try.

So in approaching the study of democratic governments, the centuries-long tradition of government as servant must be kept to the fore, and the machinery of government understood as a means to that end. There are, of course, many details of the constitutions of democratic countries which are neutral on this point. Whether or not women have the vote, whether the life of Parliament is five years or four, whether judges hold office for life or until they reach the age of seventy matters little from this point of view. But the main features of democratic constitutions are expressions of this purpose. These constitutions are not merely sets of rules by which the people are governed; they are also the devices by which the people govern their rulers. The democratic constitution is a body of fundamental rules which the government of the day cannot change of its own free will and which is, at the same time, a censor of governmental actions. The constitution gives sanctity to the law which cannot be changed without consent of the legislature, and it also provides that the government and its agents must obey the law or expose themselves to punishment through the courts.

In this sense, the dictatorships have no constitutions. What passes for a constitution is no more than a set of rules for the division of the work of the government. Every large organization must have rules for internal management even if there are no rules for imposing external control upon it. Otherwise civil servants would not know what to do in their day's work and would be falling over one another all the time.

But these rules for internal housekeeping are in no way a restraint upon the rulers. They can change them all by decree just as a business corporation can change the rules by which it manages its own affairs or as a plantation owner can reshuffle the tasks of his slaves. As far as governmental forms are concerned, power is utterly concentrated. The one abiding rule is authority from the top downward, obedience from the bottom upward.

Democratic countries also must divide the work of government for the sake of efficiency. There is a geographical distribution which delegates certain powers to municipalities while the residue of powers are in the hands of the central government. Sometimes this distribution is made more complex by introducing a third and intermediate level of government as in the federal systems where state or provincial governments have exclusive control of a wide range of matters. At each level of government, there is always a functional division, generally identified as legislative, executive, and judicial, with still more elaborate division or departmentalization within the executive branch. Such divisions of work, whether geographic or functional, invite disagreement and cross-purposes, and therefore every constitution must define the relationships between the different levels and functions so as to limit friction and provide an assured means of breaking deadlocks.

However, these divisions, though necessary for efficiency, are not solely directed to that purpose. In the democracies, they are designed for, and contribute in considerable measure to, preventing the concentration of power in the hands of a few. The legislature is a check on the executive; the judges are independent and commonly are sharp critics of the executive. They cannot even be said to be always sympathetic to the legislature. In a federal system, the provincial governments are a check on the central authority, and the existence of municipal governments sets limits to the ambitions of provincial regimes.

In the dictatorships, such division of authority as exists does not serve this purpose at all. In Germany, for example, the Nazis destroyed the federal system eliminating the

separate states. They destroyed the autonomy of the municipalities, giving them over to the charge of Nazi party bosses. The legislature was a complete farce without power and the judges were the tools of the leaders. As was said before, the concentration of power at the apex is utter and complete. In the light of this contrast, the squabbling which goes on within and between governments in a democratic country ceases to look entirely deplorable.

It might be concluded from the emphasis of this contrast that the democratic peoples are so much in fear of government as such that they would deny it any significant range of power, holding that the best government is the one that governs least. This fear was real with those who laid down the main lines of the British constitution and with the framers of the American constitution. One has only to remember the Stuarts and the government of George III! However, the men who laid down the main lines of these constitutions in the eighteenth century were not democrats. They believed in a wide range of individual liberty and constitutional government but not in the control of government by the many. They believed that the franchise should be restricted to the upper and middle ranks of the population.

It was not until the nineteenth century that convinced democrats, relying on the freedom to discuss and agitate afforded by constitutional government, won manhood suffrage. These convinced democrats were also convinced individualists who asked little of government except that it should leave to individuals the widest possible sphere of freedom of action. They wanted manhood suffrage because they thought this was the only way to ensure permanently that governments would not restrict freedom in the interests of a narrow class. Democracy inherited beliefs in individual liberty and constitutional government and made them a central part of its own creed. In the beginning, it feared government as such and thought of manhood suffrage as an additional device for keeping it under control. The principle of laissez-faire, that government should be confined to a very narrow sphere of action, was a dogma of the first importance through the greater part of the nineteenth century.

Democracy also involves the idea that government should respond to the will of the people. With the broadening of the franchise, government did so respond making laws in accordance with the aspirations of the newly enfranchised groups. When manhood suffrage had been achieved and people got some confidence that government was an instrument they could use for their purposes, some of the earlier fear of government as a necessary but regrettable evil began to disappear. At the same time, a variety of circumstances which will be considered later suggested a good many purposes which governments could be used to further. The belief in laissez-faire began rapidly to decline and democratic electorates loaded the government their servant with new tasks, new powers, and new obligations until ancient despots might well envy democratic governments their range of authority.

The steadily accelerating tendency to call on government for solutions to any and every social problem is perhaps the most remarkable social phenomenon of our time. The rapid growth of government action was well under way by 1900. It was accelerated by World War I, it slackened in the twenties, gathered speed again in the long depression of the thirties and came, during World War II, almost to match the scope of governmental functions in the dictatorships. While this peak will not be maintained, there is little likelihood of any early return to the 1939 level of government activities. The people no longer show any great fear of government and there is widespread confidence in the power of the electorate to control and direct governmental operations.

This raises a second important distinction between democracy and dictatorship. In a dictatorship, the leader and a small clique around him decide what government shall do. They are able to act with great rapidity and often with a high degree of consistency because there are only a few minds to be made up. In a democracy, the ultimate decision as to what the government is to do rests with the millions of which the widely scattered electorate is composed. Cumbersome machinery which consumes a great deal of time and

effort is necessary to consult the wishes of the sovereign electorate. More important still, it is exceedingly difficult for millions of people to come to a common mind or a majority decision about anything. When one considers how long a small committee can debate before coming to any agreement about the simplest matters, it is astonishing that the electorate ever manages to agree on instructions to its government. When it is realized how many things democratic governments do nowadays, it is understandable why the will of the people is not always manifest in what is done. What needs explaining is how the electorate is able to transmit coherent instructions to the government at all.

Democracy inherited its devices for restraining governments from the presumptuous abuse of power. It did not inherit its mechanisms for eliciting and transmitting to the government the positive measures it wants to see carried out. It had to create them, feeling its way by trial and error. The chief of these mechanisms is the organized system of political parties. Its workings are far from giving general satisfaction. A great deal of the dissatisfaction with democracy arises from a failure to understand the difficulty of what is being attempted.

The discussion which follows has two principal themes. First, the need for restraints on government as such, and the instruments by which democratic peoples have maintained these restraints. Second, the problem of deciding, in a democracy, what the government is to do in the name of all, and the instruments through which the authentic voice of the electorate is to be heard and translated into action. The two themes cannot always be discussed separately because the same instrument is often used for both purposes. For example, the legislature is both a check and a spur to government. And, as we shall see, decisions emerging from the electorate that government should be spurred on to a more positive programme of action often require that the reins by which government is checked should be slackened.

In fact, democratic constitutions have been considerably modified in the last fifty years to allow government to carry out the widening activities it is expected to perform. The

adaptation has gone so far that some will challenge the accuracy of the description of democratic constitutions given here. They will say that democratic constitutions are no longer to be understood as devices for restraining governments but rather as instruments for carrying out the will of the people, for ensuring that government does what electoral majorities want it to do. Furthermore, they will contend that any portion of the constitution which does not promote this latter purpose is outmoded and should be changed forthwith. For the past twenty years, a great debate has been raging in democratic countries over this question. Some of the considerations bearing on it will be brought out later.

One further preliminary point must be noted: a confusion in the use of language. The word "government" is used throughout in two senses. First, it is used in a general sense to denote the whole set of institutions through which some command and others obey, as when we speak of the functions of government or say that government should be servant and not master. In this sense, it is almost synonymous with the word "state," as commonly understood. However, the word "state" means different things to different people and it is preferable to refrain from using it as much as possible. Secondly, the word "government" is used in a narrower particular sense to mean the government of the day, really the cabinet or executive. In a particular sentence, it may not be immediately obvious in which sense the word is used. The context as a whole, however, will make it clear and the reader must attend to the context to avoid confusion.

CHAPTER II

CONSTITUTIONS AND THE SEPARATION OF POWERS

IT should be possible to see the essential features of democratic government by looking at its structure and functioning in Britain, United States, and Canada. But we cannot accept a view which was quite general not so long ago that a description of the constitution is all that any intelligent person would want to know about a government. We now realize that a constitution is no more than the skeleton or essential frame of orderly government. The constitution defines and provides for the establishment of the chief organs of government. It outlines the relationship between these organs and the citizen, between the state and the individual. Being concerned mainly with the pedigree of governmental organs and the relationship between them, it does not create the government or make it work. By itself, it is inert and lifeless and only when clothed with flesh and blood (human passions and active agents) does it begin to win friends and enemies and influence people. We learn very little about a government merely by examining its skeletal structure. We have to study the complex functional system installed in it, and also the hopes, fears, aims, and prejudices, the fundamental drives and conflicts of the individuals and groups whose actions influence the government of the day and provoke governmental action. We must go beyond anatomy to physiology and psychology—vastly more difficult subjects.

The figure may be varied. Like an engine, a constitution will not run as a going system without fuel, and the questions of where it goes and of what it accomplishes with the fuel provided, depend in part at least on the skill and intelligence of the operators. The engine itself is of vital importance. Its structure determines what you can use as fuel. You cannot run a democracy on the aspirations of a multitude of would-be dictators. It determines the kind of power, the

form in which this power can be transmitted, and the kind of operations to which it can be harnessed. The democratic constitution is not a very good machine for fighting twentieth-century wars. Most motor vehicles do not lend themselves to amphibious operations and a constitution of the liberal democratic type is not a rocket plane designed for travelling at high speed to the new Utopia.

Within limits, however, what the machine will do depends on the fuel and the operators. Human needs and dreams are the fuel on which governments run and what governments do depends on the tangled motives of politicians and on the foibles and cross-purposes as well as the agreements of the individuals and groups making up society. Thus, to understand a government and to appreciate how it works requires an understanding of human nature in general, and also of the unique characteristics of the particular society in which it operates. The government of a people is like the history of that people—the study of a lifetime.

This explains why all sorts of contradictory statements can be made about government with a show of truth. For example, many close observers of liberal democratic governments have described them and their operations as enforcing the will of the people. On the other hand, many searching critics have described them as tools of an economic oligarchy— instruments for maintaining the rule of the capitalist class. Exponents of both these views are competent and honest and they can both produce impressive evidence to support them. The truth is that so great a variety of forces and motives enter into government in the twentieth century and the response of government to these is so complex that a plausible case for a great many propositions can be made out. No one key will unlock the mysteries of government and we must always beware of thinking we know more than we really do.

If, in his initial approach to government, the student tries to comprehend it in all its complexity he will be completely baffled. A play-by-play description of what goes on at the national capital on a single day would convince him that he should stick to a tidy subject like mathematics. Difficult

subjects can only be handled by the Hitler technique, isolating and defeating one at a time the elements involved. One can begin with the anatomy of government—the framework to be found in the constitution. That will occupy the attention of the present chapter and much of the succeeding chapters. At the next level of difficulty, one can isolate the organs and agencies of government and see how they function within the framework. Finally, one can consider how far this functioning is a response to the environment in which government operates, to what extent government action reflects the interplay of the social forces of the community. In the later chapters, some consideration, inevitably incomplete, will be given to the physiology of government and to the reaction of the organs to the environment.¹

WHERE TO LOOK FOR THE CONSTITUTION

The British constitution is always said to be unwritten. This is not to say that it has nowhere found expression in the printed word but rather that the principles and detailed rules of the constitution have never been collected together in a formal document solemnly adopted at a specific date. The British people have never made a sharp revolutionary break with their past. Freedom—and everything else political in nature—has slowly broadened down from precedent to precedent. The present-day constitution has been worked out over centuries by trial and error. What endures is what has been found workable. Magna Carta, 1215 A.D., although overrated in popular oratory, is the earliest, and still a significant, document of the constitution. The Petition of Right, 1628, the Bill of Rights, 1689, the Act of Settlement, 1701, the great Reform Act, 1832, are others of prime importance. In terms of bulk, the greater part of it is to be found in the form of statutes enacted by Parliament. Almost all the momentous changes of the past century have been thus brought about, such as the extension of the franchise, the method of elections, and the defining of the rights and duties of public officials.

¹The use of the biological analogy must not be taken to suggest that biological laws are in any way applicable to the state. As the analogy becomes more forced in later pages, this will probably become sufficiently obvious.

Many basic principles, however, rest on the Common Law, that vast body of English law based on custom and reshaped to new needs by succeeding generations of judges. The principles which rest on the Common Law have to be spelled laboriously out of the decisions of the courts in particular disputes. Finally, a considerable and important portion of the constitution has no other basis than comparatively recent custom. The conventions of the constitution, as these are called, concern mainly the relation of the cabinet to Parliament ensuring that the government is always carried on conformably to the will of the majority in Parliament. Thus a first-hand exploration of the British constitution would take one through ancient charters, scores of statutes, hundreds of judicial decisions, and finally into the biographies and correspondence of statesmen which often provide the only written evidence for the conventions of the constitution. Its elusiveness is excused by saying it is unwritten. The logically minded who want everything in precise black-and-white throw up their hands and say, "The British constitution! There's no such thing!"

The American Revolution was a pretty clean break with the past and the Americans got from it a written constitution. But they did not write on an entirely clean slate. Both in what they accepted and what they rejected they were decisively influenced by their past. This remarkably short document, whose reading time would not alarm the devotee of the popular magazine, is not, however, by any means the whole of the American constitution of today. To make the paper constitution work in practice and adapt it to the changing American scene, much improvising had to be done. With the passage of time, many usages for which there is no warrant in the written text and which it takes a substantial volume to describe, have acquired an importance and sanctity scarcely less than that of the constitution itself.

The Supreme Court of the United States which has the last word on the meaning of the constitution has added a wealth of meaning to many of the terse phrases of the written document. It has held, for example, that some matters not expressly mentioned therein are necessarily

implied. As a result, no conceivable feat of imagination would suffice to gather from the written text what 150 years of interpretation have made it mean. It takes hundreds of pages to describe even summarily the contribution of the Supreme Court and thus there is some warrant for the frequent jibe that the constitution is what the Supreme Court says it is.

✓It is commonly said that the Canadian constitution is contained in certain statutes of the British Parliament, the British North America Acts of 1867-1943. But here again the great bulk of the constitution and many of its most important provisions are to be found elsewhere. An examination of the British North America Act of 1867 will show that it is mostly concerned with outlining the constitution of the new Dominion thereby created and with fixing the relationships between, and the respective powers of, the new Dominion and the provinces. The only substantial qualification on this arises from the fact that Confederation involved the breaking up of the old province of Canada into two entirely new provinces, Ontario and Quebec, and the constitutions of these two new provinces had to be provided for in the Act. The other provinces either retained the constitutions they had already received as British colonies or, as in the case of the Prairie Provinces, later received their basic constitutions from acts of the Dominion Parliament.

Yet this is by no means all. British colonies have always been deemed to hold, as a right, such portions of the British constitution, particularly those resting on Common Law and custom, as are not incompatible with their situation. The provinces (but not the Dominion) are empowered by the British North America Act to add to or modify their constitutions and they have often exercised the power. So the provincial constitutions, except those of Ontario and Quebec, are either royal commissions and instructions issued to colonial governors (providing for the government of the colony before Confederation) or Dominion statutes (bringing post-Confederation provinces into existence), worked into an amalgam with provincial statutes, English Common Law, and the charters and conventions of the British constitution.

If we leave the provincial constitutions entirely aside, only a part of the constitution of the Dominion is to be found in the British North America Acts. The Act of 1867 refers to the Governor-General but does not create his office. The executive government and Privy Council are provided for but there is no mention of the cabinet. Provision for the cabinet has to be spelled out of the preamble of the British North America Act which recites the desire of the colonies for a constitution "similar in principle to that of the United Kingdom," out of certain statutes of the Dominion Parliament, and the conventions of the British constitution relating to cabinet government. Equally, most of the Common Law principles of the British constitution are applicable. Numerous other matters, such as the privileges of Parliament, the franchise, election laws, and the constitution and powers of the Supreme Court of Canada, depend on statutes enacted by the Dominion Parliament under powers specially given by particular sections of the British North America Act of 1867.

This sketch indicates the sources and some of the range and variety of constitutional provisions. It also suggests that if a search for the essential elements of a constitution is not to lose itself in a welter of confusing materials, some categories to help in classification and analysis will have to be adopted. Just as the amateur botanist, lacking a principle of classification, wanders among the flowers and gets only the impression that nature is wonderful, so the student of government without categories for sorting out his material decides that the subject is incomprehensible.

THE SEPARATION OF POWERS

The distinctive feature of government is the exercise of power by some men over other men and a classification of the kinds of power thus exercised, though artificial to a degree, aids understanding. At the simplest level of discussion, a familiar classification, as old as Aristotle, is available for use. There are, it is said, three distinct kinds of governmental power, legislative, executive, and judicial. Legislative power consists in making laws, general rules of

conduct supplementing or replacing some of the older rules based on custom or unwritten law. Executive power consists in the executing or carrying out of the laws and the carrying on of the manifold public activities and services, the daily drudgery which exhausts the civil servant. Judicial power consists in interpreting the laws or, more concretely, deciding in the event of dispute, what specific acts are permitted or required or forbidden in execution of the law.

While it is impossible thus to classify all the varied powers exercised by modern governments, these categories will serve for immediate purposes. Montesquieu, a French writer of the mid-eighteenth century, adopted this classification and made himself famous by arguing that the secret of civil liberty lay in the separation of these powers, in the reserving of each type of power to different persons or bodies of persons. One man or group of men should exercise substantially all legislative power and at the same time have no extensive share in or control over executive or judicial power. Men will always push what power they have to the limit and, if those who make the laws also enforce them, they can tyrannize over their fellows. The result will be the same if either executive and judicial, or legislative and judicial, power is joined in the hands of the same persons. No one body of men, according to this argument, can be trusted with the monopoly of force possessed by government.

According to Montesquieu, assurance that government shall be servant and not master depends on the separation of powers. This, he argued, is the essence of an effective constitution. He thought he discerned a proof of his argument in the British constitution of the eighteenth century. Britain enjoyed individual liberty, while on the Continent where absolute monarchs had gathered all power into their hands no one had any sure tenure of freedom. He saw the independent status of the judges in Britain, ensured by the Act of Settlement of 1701. He saw in Parliament a legislative authority independent of the executive and he thought he saw in the King, his advisers and servants, an independent executive authority. He was in substantial error on this last point but the British constitution did conform to the

classification and there was then some measure of separation of powers.

The Americans could not find the civil and political liberty they wanted under the British constitution in the days of George III. Yet they were deeply impressed with Montesquieu's analysis, if not with the particular proof he offered. They were the more impressed because Locke, the philosopher of constitutionalism, had pointed to a similar conclusion. Moreover, the conservative-minded fathers of the constitution feared the excesses of popularly elected legislatures as much as they feared a powerful executive. Accordingly, they set out to fashion a new government composed of three powers, each of which would be separate and, at the same time, a check on the others. So whatever of enduring wisdom there is in the separation of powers, it is a principle closely associated with the rise and spread of modern constitutional government. The constitutions of the modern world which have tried to hold governments strictly to account have relied heavily on the British and American models. This is reason enough for using Montesquieu's doctrine for preliminary analysis. Its value can be more justly assessed at a later stage.

Very early in British constitutional history, the powers of government exercised by the Norman and Angevin Kings began to be differentiated along lines resembling the three-fold classification, and distinct organs for their exercise emerged. The Great Council, composed of the great feudal lords and meeting three times a year, "advised" the King largely by trying to set limits to royal action as in Magna Carta. With the addition of representatives from the counties and boroughs, the Great Council developed into Parliament. The redress of grievances and the imposition of limitations on the King took the form of laws enacted with the consent of the King.

Apart from the Great Council, the King was advised by an inner council composed of his trusted lieutenants, the heads of an embryonic civil service only slowly differentiated from the King's personal household. This inner council, generally called the Curia Regis, carried on all the executive

work of government, doing the will of the King everywhere except where blocked by the Great Council. As government business increased, several groups of these officials specialized in settling disputes and interpreting the law applicable to them. At first, they were merely committees of the Curia Regis but after developing an organization and procedure of their own, they became distinct and separate courts of law, although until 1701 the judges still held office at the King's pleasure. Within the Curia Regis itself, increasing size brought the need for a small executive committee—hence the Privy Council, close to the King. The Privy Council became the real executive council, and even today the formal authority of the cabinet derives from their being sworn "of the Privy Council."

LEADING PRINCIPLES OF THE BRITISH CONSTITUTION

Thus distinct legislative, executive, and judicial organs took shape. It would, however, be misleading to suggest that the judges never made laws and that the legislature and executive always refrained from judging, and wrong to think that each organ had a well-marked sphere of authority in which it was separate and independent. In part at any rate, the struggle between Parliament and the Stuarts arose out of the indefiniteness of the relationship between these organs which was only cleared up by the constitutional settlement after the Revolution of 1688. The judges once appointed were made independent of the executive. It was settled that only Parliament could change the law or make a new law such as the levying of a tax—which, in effect, made Parliament supreme. The power of governing the country subject to the limitations thus imposed by law, the administration of the colonies and the conduct of foreign relations remained with the King and his advisers appointed by him. It took most of the eighteenth century to establish beyond question the rule that the King must choose ministers who enjoy the confidence of Parliament. Montesquieu can be excused for thinking in 1748 that the executive was separate and independent.

But there has been no excuse for anyone in the last

hundred years thinking that the British constitution exhibits a sharp separation of powers. The basic principle of the British constitution is the utter supremacy of Parliament. Any and every law passed by Parliament is constitutional. It has been said that Parliament can do anything except make a man a woman. This is a serious understatement. If Parliament were to declare that henceforth women were to be treated in all respects as if they were men, the executive and the courts would be obliged so to treat them, even in the face of nature. Women would then have to be called up under the military service law hitherto applicable only to men. Obviously, this means that Parliament can turn absurdities into laws and can work its will on the other two organs of government. It could pass a law dismissing all servants of the Crown and taking into its own hands the entire executive power. It could abolish the judiciary. So it can enlarge or diminish at pleasure the sphere of the executive and judiciary. It can—as it has increasingly done in the last seventy-five years—delegate law-making powers from itself to the executive. There is no ban on law-making by the executive if only Parliament will authorize it. It can—and does with great frequency—take the power of interpreting particular laws away from the judiciary and give it to the executive.

Later, we shall consider the reasons for these developments. At the moment, it is enough to note that Parliament can do this—and also can repeal such delegations tomorrow just because it is supreme. Even though Parliament were to say today that these changes are irrevocable, it could repeal them tomorrow. Of course, as long as Parliament has to please an electorate, there are many things it will not dream of doing. But if it does take the bit in its teeth, there is no doubt whatever about the constitutional validity of the result.

In short then, the constitution is what a supreme Parliament says it is. Parliament can change any law by majority vote, and it can change any portion of the constitution with equal ease. The constitution has no superior sanctity. The executive, far from being separate and independent,

is directly responsible to Parliament. The ministry, composed of some sixty ministers, heads the various departments of government and directs all the energies and activities of the civil service. A varying number of the more important ministers, generally about twenty, composes the cabinet. Since the cabinet—and the other ministers also—must have seats in Parliament, it is, in reality, a committee of Parliament for the executive management of the nation's affairs. When this committee loses the confidence of the House of Commons, it must either abandon the direction of affairs of state and resign, or seek a dissolution of Parliament in the hope that a newly elected House of Commons will give it renewed confidence. In formal constitutional theory, at any rate, the executive is dependent on Parliament. The cabinet is, in Bagehot's words, a buckle, a hyphen, a combining committee, for ensuring harmony between the detailed execution of the laws by the civil service and the will of the majority in Parliament. The executive and legislative powers are not separated but almost completely fused.

The judges are appointed by the King on the advice of his ministers but the appointment is for life and during good behaviour. They can only be removed by an address of both Houses of Parliament. Because of a high standard of judicial rectitude and impartiality, this power has almost never been used and the judicial power has enjoyed a high degree of independence. It must be remembered, however, that Parliament has the power to declare that any and every interpretation of law made by the judges is wrong and, by an amendment, to substitute its own authoritative interpretation. Also, Parliament may take from the courts the power of interpreting particular laws.

Although there is no formal separation of powers, it would be incorrect to think that these organs do not act as some check on one another. The heads of the civil service sometimes find obstacles to doing what Parliament wants to do. The courts not infrequently interpret the laws to mean something different from what Parliament intended and the executive hoped. Even the majority in Parliament which supports the cabinet is sometimes reluctant to support the

proposals of particular ministers. The significant fact is that if Parliament really makes up its mind, nothing can stand in its way.

There is another fundamental principle of the British constitution called the Rule of Law. Although its exact significance is a matter of much debate, it is clearly of critical importance. The Rule of Law means, at least, that all actions of government must conform to the law and an individual cannot be prejudiced in person or property by the government or anyone else except in accordance with existing law. It has commonly been thought that, in addition, officials had to justify their actions by the law generally applicable to all citizens before the established judiciary which is free of all suggestion of executive influence.

A hundred years ago there was much more warrant for this last proposition than there is today. For a long time now, Parliament has been granting to officials special powers to take action not justified under the ordinary law and it has been limiting the right of the citizen to have the actions of officials scrutinized by the judicial power. Yet there has been no general removal of officials from judicial surveillance, and it remains true in most cases that anyone who asserts that he has been wronged by the action of a government official can bring that official before the courts of law to answer for his conduct. The official may justify himself by pointing to an act of Parliament which gives him a special privilege to do what he has done. But he cannot turn aside the complaint merely by asserting an exalted official status and an inscrutable executive expediency in what he has done. The state can throw away the conscript's life but it cannot conscript him in the first instance on the plea of high policy or public expediency except as supported by a law sanctioned by Parliament. The Rule of Law, although qualified today by the grant of special powers to officials, remains an indispensable instrument for ensuring that government remains servant.

Parliament, being supreme, could abolish the Rule of Law tomorrow. As long as Parliament is concerned to keep the executive under control, it is unlikely to do so. Yet the fact

that the Rule of Law does not now mean what it meant a hundred years ago indicates that the really fundamental principle of the British constitution is the supremacy of Parliament.

THE CONSTITUTION OF THE UNITED STATES

Although only a part of the constitution of the United States is now to be found in the written document and in the twenty-one formal amendments, it is still the most basic part and attention will, for the present, be directed primarily to the written document. In looking at it, one must always remember that it is an instrument establishing a new national government and it takes the constitutions of the separate states of the Union almost completely for granted. With the Revolution, the thirteen states modified or repudiated their charters as British colonies. Before 1789, most of them had adopted republican written constitutions. These constitutions as since revised and added to by the admission of thirty-five new states form an important part of the American constitution. But their bulk forbids discussion here, and, in any event, on the more fundamental questions they are faithfully paralleled by the constitution of 1789.

The more important principles of the constitution may now be sketched. The first is its federal character arising from the preservation of the integrity and substantial independence of the separate states. The thirteen states which had made the Revolution had need of unity if they were to protect their nascent republicanism in a world of powerful monarchies. Yet they were not prepared at all to submerge themselves in a new state giving all authority to a single central government. The result was a compromise federal system in which a new national government was to have certain specific powers in aid of the broad general objectives, viz., "to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty." The states were to continue to exercise such authority as was not specifically granted to the national government, prohibited to the states, or withdrawn from the reach of all governments. Most of the

written constitution is taken up with defining the new national authority and distributing powers between it and the states. The special features of federalism will be considered later.

The second principle is that of limited government. Whereas the supreme legislative power under the British constitution can regulate every aspect of social life, the American constitution tried to put certain claims of individuals which were thought to be sacred human rights beyond the reach of Congress. It limited the area of human affairs over which the federal government, and in some cases the states, could exercise power. This sprang, in part, from the eighteenth-century doctrines about the natural rights of man, so prominent in the French Revolution and the revolutionary constitutions in France. In part, it sprang from the more earthy concern of the conservative framers of the constitution who feared the radical ferment stirred up by the American Revolution.

These general limitations on government are to be found principally in the original constitution of 1789 and in the first ten amendments adopted in 1791. Some of them take the form of abstract "natural" rights. For example, Congress is forbidden to interfere with freedom of religion, of speech, of the press, and of peaceable assembly. Other provisions struck at particular abuses, the usual weapons of arbitrary governments, such as general search warrants, acts of attainder and *ex post facto* (retroactive) laws, while still others sought to preserve against encroaching governments particular institutional procedures which had been useful in the English and American struggles for liberty such as habeas corpus and trial by jury.

Most of these and numerous other limitations are applicable only to the federal government and do not bind the state governments. Of those mentioned above, only the prohibitions against bills of attainder and *ex post facto* laws apply to both levels of government. However, since most of the state constitutions, in the group of clauses known as the bill of rights, go as far or farther than the federal constitution in imposing limitations, it is substantially correct to think of all these restrictions as being generally applicable.

The most famous of all these restrictive provisions is one imposed by the federal constitution on state and federal governments alike. The fifth amendment forbids the federal government, and the fourteenth amendment forbids the states, to "deprive any person of life, liberty or property, without due process of law." The phrase "due process of law" can be traced back into the early history of English law and is reminiscent of the tone of Magna Carta. The Declaration of Independence pronounced life, liberty, and the pursuit of happiness to be inalienable rights. The exact phrase used in the constitution, however, comes from John Locke, the philosopher of constitutionalism, who declared "life, liberty and property" to be fundamental natural rights of man. But the past fame of these phrases pales before the notoriety they have gained in the American constitution. The Supreme Court of the United States has been deeply divided over their meaning and this in turn has aroused acrimonious political debate throughout the country. These simple phrases have been storm-centres of bitter controversy over the last forty years.

Some restrictions were laid upon the state governments only. In the turbulent period during and after the Revolutionary War, the legislatures of many of the states had been enacting laws which impaired the rights of creditors under existing contracts and/or made the almost worthless paper currency legal tender for payment of debts. It is said that harassed creditors often took to the woods to evade their vindictive and relentless debtors who sought to pay them off in inflated currency. Accordingly, the framers of the constitution, among whom the creditor interest was well represented, inserted a clause providing that no state should pass any "law impairing the obligation of contracts."

These are some of the more important of the clauses illustrating the principle of limited government. It is scarcely necessary to state the contrast with the British constitution where Parliament could lawfully enact each and all of these measures forbidden in the United States.

The third fundamental principle is the separation of powers. The constitution of 1789 takes Montesquieu's

classification for granted. Without defining the nature of the three powers in any way, the first three articles of the document assign legislative, executive, and judicial power to three separate organs. Article I provides that all legislative powers granted therein shall be vested in Congress; Article II that the executive power shall be vested in the President; Article III that the judicial power shall be vested in one Supreme Court and in such inferior courts as Congress may establish. It is also stipulated that no member of Congress shall, during his term in Congress, be appointed to any civil office, and that no person holding any such office shall be a member of Congress. Thus no one can share in the exercise of more than one of the three powers at the same time. Neither the President, nor his cabinet, nor any executive officer, can be a member of Congress. The executive power of the United States is exercised, not by a committee of the legislature responsible to the legislature, but by an independently elected President aided by such advisers outside Congress as he sees fit to consult. The President is required to keep Congress informed of the state of the union, to advise them about the administration of national affairs, and to recommend such legislation as he thinks necessary. He has power, in certain circumstances, to convene and adjourn Congress but beyond this he cannot shape or participate in its deliberations.

The judiciary is appointed by the President with the advice and consent of the Senate. But once appointed, they hold office during good behaviour. Congress cannot intimidate them by reducing their salaries during their continuance in office. The Senate alone can remove them and only through impeachment for and conviction of a serious offence. It would appear that the powers of government are parcelled out among the three powers and kept separate by the unscalable walls of the constitution. In the United States, Montesquieu's principle received its fullest expression.

Each power was to have a will of its own and as little ability as possible to influence the choice of the personnel who exercise the other two powers. Even yet, the framers feared the popularly elected legislatures which had run riot in the

revolutionary period and they still feared a strong executive who might get it in his head to be a king. It was thought that dividing the Congress into two Houses, each to be elected by a different method and for different periods would tend to divide and moderate the legislative will. By providing for indirect election of the President, that office would be shielded from demagogues who notoriously abuse even the widest mandate.

It was thought advisable to have still further checks on power, and this abundance of caution led the framers to introduce some qualifications on the clear-cut separation of powers. Bills passed by a majority of the two Houses of Congress require the approval of the President in order to become law and can only be made law over his veto by a two-thirds vote of both Houses. The President was given some share in legislative power. The President, Vice-President, and other executive officers can be removed from office by impeachment and conviction in the Senate, thus giving the Senate some judicial power. The declaration of war, an executive act, can only be made by Congress. The Senate shares with the President the powers of treaty-making and of the appointment of high officials, also executive acts. While the President and Senate appoint the federal judges, the Senate can remove them by conviction on impeachment. The constitution of all courts inferior to the Supreme Court is confided to Congress. These checks and balances, as they are called, were not set up to knit the three powers together for concerted action but rather to ensure that the "several constituent parts [of the government] may by their mutual relations, be the means of keeping each other in their proper place."²

To those who do not know the history of the disorder of the revolutionary period, the predominantly conservative temper of the framers, and the emphasis put by the prevailing political philosophy of the time on the natural rights of individuals and on the natural propensity of government to tyranny, much of this will seem not merely abundance but

²*The Federalist* LI (Everyman edition).

excess of caution. Indeed, there is no doubt that the separation of powers and checks and balances have had unfortunate effects on American government, and there is doubt whether this complex scheme would have worked at all but for the rise of mediating institutions not contemplated by the authors of the constitution. But the various effects of the scheme on the operation of government and the important modifications which custom has brought about in the last hundred and fifty years, largely through the rise of political parties to all-pervasive influence, must be left for succeeding chapters.

The last of the important features of the American constitution to be sketched here is judicial review, the power of the judiciary to declare acts of Congress or of the state legislatures to be unconstitutional and therefore of no more legal effect than if they had never been passed. The courts cannot range across the statute book on their own motion slaying legislation at will. But when, in a dispute between parties properly brought before them, the decision is found to turn on the terms of some act of a legislature, the judges (state and inferior federal as well as Supreme Court) will inquire whether the legislation is contrary to state, or federal, constitutions, and if so, the party relying on its terms will fail through the ensuing declaration of unconstitutionality. An act of a state legislature may be struck down on the ground that it could only be enacted by Congress, or *vice versa*, and is thus a violation of the federal principle. Any statute may be attacked before the courts on the ground that it violates the "due process" clause or some other fundamental guarantee and thus infringes the principle of limited government. An act of Congress may be challenged on the ground that it violates the principle of the separation of powers. Indeed, any legislative act which is prohibited by the constitution may be held invalid by the courts.

This is in the sharpest contrast with the treatment of legislation in the British courts. The latter may misinterpret an act of Parliament but they can never question the power of Parliament to do anything which Parliament has manifestly done. The Rule of Law in Britain means no more than the

enforcement as law of what Parliament has said. The Rule of Law in the United States means also the enforcement of the "higher law" of the constitution against both the legislature and the executive.

Strangely enough, this power of the courts is not explicitly stated in the constitution but is one of the powers which the Supreme Court has long held to be necessarily implied from the provisions (a) that the constitution and the laws of Congress made in pursuance thereof shall be the supreme law of the land and (b) that the judges of the United States and of the several states are required to swear to support the constitution. The necessity of the implication has often been challenged but, in any event, custom has made judicial review as much a part of the constitution as if it were explicit in the document. Hundreds of state and federal laws have been held unconstitutional. In this censorship of legislation, of course, the Supreme Court, being the highest court of appeal, has the last word.

Congress acting alone has no power to amend the constitution. The framers did not want their handiwork to be easily marred and they made formal amendment extremely difficult. Noting the difficulty and rarity of amendments, many have said that it is the constitution which is supreme in the United States. Others, noting the relative ease with which the Supreme Court has from time to time found unsuspected meanings in the clauses of the constitution, have said that it is the nine old men who make up the Supreme Court who are supreme. Still others, seeing the numerous cases in which the ruling interpretation given by the Supreme Court rests on the narrow majority of five judges for and four against, make still more disturbing comments. Such remarks are significant but no simple statement will uncover the locus of supreme power in the United States.

✓ CONTRASTS IN THE CANADIAN CONSTITUTION

The Canadian constitution is modelled on that of Britain and needs no extended comment at this point. A few basic considerations may be reviewed. First, because of the federal character of the constitution, the Dominion Parlia-

ment is far from enjoying the unqualified supremacy of the British Parliament. There is a very large sphere in which the provincial legislatures only can enact laws. Secondly, once the distribution of legislative authority imposed by federalism is clearly ascertained, the Dominion Parliament and provincial legislatures each enjoy, within their own area of competence, substantially the same unchallenged supremacy as the British Parliament. There are no bills of rights or fundamental guarantees of individual liberties such as are found in the United States. The British North America Act contains, it is true, certain special guarantees of minority rights in education and language. Subject to these restrictions, the appropriate legislature can do anything by majority vote.

Thirdly, the separation of powers is flouted to almost the same degree as in Britain. Cabinet government modelled on that of Britain knits together the legislative and executive powers. The judges are appointed by the Governor-General on the advice of the Dominion cabinet and they can only be removed by an address of both Houses of Parliament. It should be added, however, that in Canada the mode of appointment and removal, and the tenure, of judges are fixed by the British North America Act and cannot be altered by the legislature, as they can in Britain.

Fourthly, the principle of the Rule of Law, subject to the qualifications already noted in the case of Britain, is a part of the Canadian constitution. Indeed, this principle has a wider recognition in Canada because a substantial, though limited, judicial review of legislation takes place. Whenever Dominion or provincial legislation is in issue before the courts, the judges will consider its constitutionality, whether or not it violates the federal division of legislative power set out in the British North America Act. Judicial review is not nearly so extensive as in the United States because there are no bills of rights and no strict separation of powers operating as limitations on legislative power. The only question the courts can ask of legislation is whether it violates the terms of the British North America Act, which, like the constitution of the United States, is binding on all legislatures.

By considering this point further we can review in summary important contrasts between the three constitutions. When the Quebec legislature enacted the Padlock Law authorizing the government to lock up buildings used in the distribution of communist literature, when the Alberta legislature tried to regulate the newspaper business, and when the Ontario legislature declared certain contracts between the Ontario Hydro Electric Power Commission and some Quebec power companies to be no longer binding on the Commission, the Canadian courts had to consider one constitutional question only: whether the provincial legislatures had invaded a field of legislation reserved to the Dominion Parliament or to another provincial legislature. In the two latter situations but not in the first one, the legislation was found to be such an invasion and therefore null and void. In Britain, the courts could not have reviewed such legislation as this on any ground; they could only have considered its meaning. In the United States, on the other hand, in addition to the federal question, the courts would also have had to consider very seriously whether the legislation in question did not invade freedom of speech and peaceable assembly, infringe freedom of the press, and impair the obligation of contracts respectively. If so, the legislation would have been null and void, even though it did not violate the federal distribution of powers.

FORMAL AMENDMENT OF CONSTITUTIONS

So far we have considered constitutions as if they were frozen and static, imposing a rigid frame within which the powers of government are exercised. Obviously, a high degree of stability in a constitution is necessary because order and security depend, in part, on being able to anticipate what governments can do or can be required to do. On the other hand, only a static caste-ridden society could tolerate an unchanging constitution. As long as social change, or progress, continues, it is vital that the constitution should respond to decisive social transformations. A too rigid constitution may stifle, or distort the direction of, change. At the other extreme, the forces dammed back by it may

gather enough force to break it by revolutionary means. As an alternative to violence, there is stealth. The constitution may be evaded by pretending it does not apply to a particular situation or even by pretending it is not there. If the pretence is accepted for a considerable time without effective protest, it amounts to an unacknowledged change in the constitution. It is important, therefore, to see what formal methods of amendment, if any, constitutions specifically provide for. Then certain types of informal amendments, changes by stealth, will be considered.

As the British Parliament is utterly supreme, it follows that it can change the constitution as it sees fit. An ordinary law passed by a simple majority suffices to make the profoundest constitutional change. However, the recently developed doctrine of the mandate, to be considered later, is an important modification imposed by custom on this sweeping power of Parliament.

Article V of the constitution of the United States provides for four methods of amendment, all of great difficulty. More correctly, perhaps, there are two ways of proposing amendments each of which offers an alternative method of ratification. A two-thirds majority in Congress may propose an amendment which may be ratified either by three-fourths of the state legislatures or by approving conventions called for the purpose in three-fourths of the states. The legislatures of two-thirds of the states may require Congress to call a convention for proposing amendments, and any amendment it proposes may be ratified in either of the ways mentioned above. Thus far, all twenty-one amendments have been proposed by Congress. The first twenty were ratified by the state legislatures and the twenty-first, repealing the eighteenth, or prohibition, amendment, by conventions in three-quarters of the states.

The difficulty of formal amendment is thus fairly obvious. If one can judge from experience since the Civil War, it takes a quarter-century of agitation to get an amendment launched with any hope of success and the issue must be one which can be dramatized so as to arouse widespread popular interest and feeling. Forbiddingly technical matters, whatever their im-

portance, will scarcely ever muster the necessary support. There were some who thought it would be impossible to repeal the eighteenth amendment even though every man, woman, and child carried his own flask. However, the issue turned out to be one of broad popular appeal and the amendment went through quickly. The constitution is generally regarded as much too rigid and most changes have been worked by informal methods. Thirteen of the thinly populated states with less than 10 per cent of the population can block an amendment. This was what was feared would block repeal of the eighteenth amendment. Although thousands of resolutions for amendments have been introduced in Congress, Congress has given the necessary two-thirds majority to only twenty-six and of these, five have failed to get adequate support in three-quarters of the states. Amendments to the state constitutions are generally required to be prepared by the state legislatures and ratified by popular ballot.

The mixture of rigidity and flexibility in the Canadian constitution has already been noted. Broadly speaking, the appropriate legislature, Dominion or provincial, can amend any portion of it which is not to be found in the clauses of the British North America Act establishing and defining the federal division of power. The provincial constitutions, excepting the provisions relating to the office of Lieutenant-Governor, can be amended by the provincial legislatures. The Dominion Parliament, by an ordinary majority, can alter any portion of the constitution which is not put beyond its power by the British North America Act. On these matters, the appropriate legislature has supreme power. The rigid part of the constitution is the federal part, the British North America Act which can only be amended by the British Parliament which made it.

This requirement is only a formal necessity. Canada is a fully autonomous member of the British Commonwealth of Nations. The British Parliament would not dream of amending the Act without a request from Canada and it is almost certain that it would accept no less and require no more than a request from the Dominion Government. So

when it is said that Canada has no power to amend her own constitution, the jibe applies only to the British North America Act and means no more than that Canadians have never settled on a method of originating and ratifying amendments to this Act within Canada itself as a prerequisite to a formal request for action by the British Parliament.

These requests have always been made by the Dominion cabinet and since 1886 they have always been preceded by a resolution of both Houses of the Dominion Parliament. In recent years, some provinces, at least, have feared that the enlarging activities of the Dominion would result in encroachment on the provincial sphere. Clearly, if the Dominion alone has the power to request amendments which are never refused, it could use its substantial control of the amending power to cut away provincial autonomy. So there is much insistence that the provinces be consulted and even that the unanimous consent of provincial governments is necessary before an amendment is sought.

A practice of consulting the provinces on at least those amendments which affect the provinces directly is fairly well established and, as a matter of practical politics, it is almost inconceivable that amendments reducing provincial powers should be sought without first getting the consent of most of the provinces, and, in some instances where racial, linguistic, and religious matters are involved, without getting their unanimous agreement. Yet the practice has not hardened into a custom of the constitution and the practical political necessities cannot be defined with any precision. Details belong to a later discussion of federalism but the situation is obviously unsatisfactory. In 1931, in the Statute of Westminster, the Magna Carta of the British Commonwealth of Nations, the Dominions were given full power to repeal or amend any act of the British Parliament applicable to them. This would have located in Canada power to amend the British North America Act. Because Canadians could not agree on the mode of exercise of such a power if they had it, the Dominion Government had to ask that this badge of independence be not pressed upon the country and the pro-

vision of the Statute of Westminster referred to above was not made fully applicable to Canada.³

INFORMAL AMENDMENT OF CONSTITUTIONS

A constitution which provides for one particular method of amendment, by implication forbids all other methods. Informal amendment is, therefore, a paradox. It is a development of the constitution by unconstitutional means. This raises the large question of the nature of political processes which often rely on devious pretence rather than straightforward rational attack. Yet wherever there is life, this informal development of the constitution goes on ceaselessly. In the working of a constitution, new problems are always being met. The instinct for a quiet life predisposes the men who are working it to modify its application to the circumstances, or to read into it particular answers to questions on which it has no answer at all, rather than to cry out that the constitution is unworkable unless amended. But the process of patching, stretching, and twisting goes on until it finally becomes clear to everyone that a change has come about and has been generally accepted. The individual men who begin and carry along the piece-meal adjustments often do not appreciate their creative role or perceive the general direction of their labours. Like the polyps on the coral reef, they work silently below the surface building atolls and islands and archipelagoes of which they never dreamed.

Informal amendment comes about either through custom or judicial decision. Custom is much more widespread in its operation because it works more silently over longer periods. A notable example are the conventions, or customs, of the British constitution which enforce the responsibility of the cabinet to the House of Commons. For centuries, the King chose whom he would as his advisers and ministers. But it has been clear for over a hundred years that ministers who lose the confidence of the House of Commons must either resign or secure a dissolution of Parliament hoping to find renewed support in a newly elected House of Commons. In effect, the King must now choose as his ministers persons

³See the Statute of Westminster, s. 7.

who can carry the House of Commons. The various conventions which ensure the workability of cabinet government were worked out slowly over many years.

It has already been stated that the power of Parliament to amend the constitution has been qualified by the convention which requires Parliament to have a mandate from the electorate for making any fundamental constitutional change. This convention is a very recent one resting almost entirely on the practice of the last thirty-five years. But it gets its real authority from an inner logic. If Parliament were to use its undoubted power to make any law whatsoever to force through unpopular and drastic changes in the constitution, it would be soundly punished by the electorate at the first opportunity. Thus it is the part of wisdom for Parliament to refer all proposals for drastic change to the electorate at a general election. Like all constitutional changes resting on custom, its limits are hard to define. How does one identify changes so fundamental as to require a mandate? In 1937, the Public Order Act in Britain put some very substantial restrictions on freedom of assembly. One might have thought this was a fundamental constitutional question, yet no mandate from the electorate was sought.

It is also difficult to know when a decisive change has been effected by custom. Until 1940, no President save Theodore Roosevelt had been nominated for a third term, and it was generally said that custom had made a third term unconstitutional. Yet, President Roosevelt sought and obtained a third term in 1940 and a fourth term in 1944. Does this mean there is no rule against a third term or is it merely an application of the maxim, *inter arma leges silent?*

The method of election of the President of the United States is a striking instance of a decisive change brought about by crystallization of usage. The written constitution provides for indirect election of the President by a body of electors. Through the operation of the political party system, these electors are now chosen by popular means and are pledged to cast their votes for one or other of the presidential candidates put forward by the two parties. Indeed, the political parties themselves in the three countries,

although their activities are now in some instances regulated by formal legal rules, are extra-constitutional growths depending on custom.

The other method of informal change is judicial decision. In Britain, United States, and Canada, the judges are required to interpret the constitution when it is in issue in disputes coming before them. He who interprets authoritatively sets the measure of the law, be it constitutional or otherwise. In Britain and Canada, part of the constitution is found in the Common Law which is derived entirely from judicial decision and which is subtly modified thereby. The judges also interpret statutes, many of which are part of the constitution; but they do not interpret those conventions of the constitution which depend on modern custom. The British North America Act is finally interpreted by the Judicial Committee of the Privy Council in Britain and there are endless complaints that it has imposed on Canada by its interpretation a constitution vastly different from what the Fathers of Confederation intended. Whether or not this charge can be substantiated in full, there is no doubt that the Privy Council has made significant modifications.

In the United States, for over a hundred years the Supreme Court has had to be continuously deciding what the brief and often vague phrases of the written document mean in relation to the development of a continental domain by a restless and almost inexhaustibly resourceful people. A little reflection on the movement and variety of American life and the transformations of the last century will show that the judges could not possibly find all the answers in the short written document. It now takes volumes to do justice to the meanings which the Supreme Court has read into it.

Two illustrations in brief and inadequate form must suffice here. Article I of the constitution gives Congress power "to regulate commerce with foreign nations and among the several states. . . ." All commerce which is not interstate must be regulated, if at all, by the state legislatures. The river-boat, pack-horse, and wagon-freight days of 1789 have given way to the age of steamships, railways, motorized road transports, and airliners; local industries serving a local

market have been replaced by prodigious enterprises making products shipped to every state in the Union. How much of this activity is interstate commerce? Who would know from an examination of the words alone that an insurance company which insures clients who live in other states is not engaging in interstate commerce⁴ whereas the transactions of a correspondence school with its pupils in other states is interstate commerce, and therefore subject to regulation by Congress?

The constitution does not say expressly that Congress has power to regulate trusts and combines as affecting interstate commerce but the Supreme Court has held that Congress may do so. On the other hand, in 1918, the Supreme Court decided that Congress could not forbid or regulate child labour as used in making goods which go into interstate commerce. In 1941 it reversed this decision and Congress can now regulate child labour in such circumstances. This is why it can be said with some show of reason that the constitution means what the Supreme Court says it means. It now takes a book to explain fully what the interstate commerce clause means.

The fourteenth amendment, adopted in 1868, forbade the states to "deprive any person of life, liberty or property without due process of law." The primary purpose of the amendment, it appears, was to protect the newly enfranchised negroes in the southern states in the exercise of their newly acquired political and civil rights. The amendment was not vigorously used for this purpose but for forty years the Supreme Court interpreted it as forbidding a variety of efforts by state legislatures to regulate various aspects of economic life on the ground that legislation which interfered with freedom of contract, except as obviously police or health measures, was a deprivation of liberty or property, or both, without due process of law. The "due process" clause was bent to the service of *laissez-faire*, the doctrine that govern-

⁴The Supreme Court so decided in 1869. But in 1944, it gave a decision which seems to point in the opposite direction and to suggest strongly that such an insurance company is engaging in interstate commerce. If the 1944 decision stands, it will be a clear illustration of how the Supreme Court modifies the constitution.

ment should leave business alone. In recent years, however, with a considerable change in the personnel of the Supreme Court, there has been a marked retreat from this position and a restoration of emphasis on the protection of minorities from attacks on their political and civil rights. The forty years which the Supreme Court spent in protecting the freedom of economic enterprise from the more controversial forms of state interference may turn out to have been no more than an episode in constitutional development. In any event, it is a striking illustration of amendment by judicial interpretation.

This discussion does not pretend to be an outline of the constitutions under review, or even a comparison of all their salient points. It gives no clue at all as to how governments actually operate within these constitutions. It merely marks a number of points of departure and tries to cut a few exploratory paths through the jungle which modern government presents to the student. All classifications and categories are tentative, to be tested with increasing knowledge as that comes from further elaboration of detail. It is hoped that it reveals the inadequacy of engineering and biological analogies. The constitution is a framework or an engine but it is one which is constantly being revised and modified by a process which bears an analogy to growth. It is the bony structure or anatomy of government but it is modified at times by deliberate purposeful intelligence, and here the tempting analogy is mechanics and not biology. The application of other possible analogies would show that a constitution is *sui generis*.

CHAPTER III

THE EXPANSION OF GOVERNMENT ACTIVITIES

THE main lines of the British and American constitutions were laid down in the eighteenth century. Prominent among the factors determining those lines was the view then taken as to what it was either possible or desirable for government to do. The role which government can play in human affairs is physically limited by the means of transport and communication and by the productiveness of the economic system. Obviously, governments cannot let the numbers of their employees outrun the food supply. The role which government ought to play within the limits of the physically possible is determined by the views of the politically powerful of the time and place.

In the eighteenth century, modern developments in transport and communication had hardly begun and the modern industrial economy which has so increased productivity was still in embryo. There were many serious physical limits to governmental action from which we have now been freed. Also, the dominant political thought of the eighteenth century favoured individual liberty of action with corresponding restrictions on governmental action. Thus these constitutions did not envisage government taking on a wide range of functions.

In the first half of the nineteenth century, the means of transport and communication were greatly improved and extended and there was an enormous increase in economic productivity. The inescapable limitations on the range of governmental action were greatly diminished and governments did take on some new functions. But the political theory of laissez-faire, the theory that government ought to be restricted to a very narrow sphere of operation, steadily gained strength and reached its zenith about 1860. The amazing material progress of the time was generally attributed to the abandonment of government regulation in

economic and social matters. It was in this atmosphere that Confederation was achieved in Canada. So the Canadian constitution, although adopted just as the belief in laissez-faire began to decline, is a product of much the same outlook which fashioned the constitutions of Britain and the United States.

LAISSEZ-FAIRE AND ITS DECLINE

Generally speaking, the laissez-faire philosophy held that government should restrict itself to protection of the community from external enemies, maintenance of internal order, and a few great essential public works. Maintenance of order may involve much or little. Laissez-faire interpreted it narrowly, calling it the police function and invoking only the technique of the criminal law. By general laws, the legislature was to forbid those forms of conduct which are disruptive of order and then rely on the policeman and the courts to punish law-breakers. Faced with the certainty of detection and punishment, all but a few would be deterred from anti-social behaviour. There would be enough gaols (essential public works) to look after the incorrigibles. Within the limits thus imposed, individuals were to be free to direct their energies as they saw fit. Of course, engagements freely entered upon must be kept. The judiciary was to award damages for breach of contracts, and also for a variety of minor transgressions known as torts, not serious enough from a public point of view to merit the proscriptions of the criminal law.

Therefore, public works and military establishment apart, government was to be mainly occupied in making general laws applicable to everybody and enforcing the judgments of the courts on transgressions as they appeared. The state, as thus envisaged, has been aptly described as the negative state, imposing restraints at the margins of socially permissible conduct. The believers in laissez-faire never were able to restrict the operations of government to the narrow sphere prescribed by their beliefs. But they had a profound influence on the scope of government action throughout the greater part of the nineteenth century. The negative state

was not merely an academic theory; it was largely realized in the scope and character of nineteenth-century governments.

After the middle of the nineteenth century, however, a combination of forces steadily undermined the laissez-faire tradition. Except in Britain where free trade ruled until 1931, important sections of the business community wanted—and got—government intervention in the form of tariffs to aid industrial development. In continental Europe, agriculture as well got tariffs to protect it against the competition of cheap wheat from America. The shift of population from rural isolation to rapidly growing industrial cities brought many new social problems. Elementary education became a necessity; public health measures had to be improved. Later it was seen, for example, that a system of employment exchanges was necessary to give the necessary mobility to labour. These are only examples of the services necessary to an industrial society which the government has been asked to provide or to supervise. Moreover, it was gradually realized that unrestricted individual enterprise did not bring about the degree of social justice which had been expected of it. While wealth and productivity increased at an astonishing pace, a large section of the population was still condemned to grinding poverty and/or acute insecurity. At the same time, competition proved an inadequate regulator in various branches of industry. Large-scale organization produced monopolistic features in industry where entrenched interests levied toll on the public.

These facts gave at least an appearance of deliberate exploitation and two types of measures were adopted to combat it. First, regulations of various kinds, ranging from Factory Acts requiring safety devices in factories to the fixing of rates and standards of service for railway companies, were imposed by governments on industry. The government was to regulate industry so as to ensure operation in the public interest. Secondly, an attempt was made to reduce the glaring inequalities of income and improve the security of the less fortunate members of society through social services or social security measures such as health insurance, un-

employment insurance and old age pensions. These measures are administered and financially supported by governments. Through taxation, income is taken from the taxpayer and transferred to the recipients of these services. The movement towards social security and regulation of business was greatly accelerated by the extension of the franchise to the adult male population. The mass of the people had no firm conviction that *laissez-faire* was an advantage to them and they did see the advantages to be had from social services. Politicians learned the connection between votes and the services desired by large groups in the population.

Once significant breaches were made in the principle of *laissez-faire*, its inhibiting power was greatly diminished and finally almost disappeared as an influence on public policy. Government had proved amenable to popular control through a democratically elected Parliament. It provided services of great value and there seemed to be no reason why it should not be used to correct all kinds of maladjustments. Britain and America had been the great strongholds of *laissez-faire* but by 1939, even in these countries, almost every significant social group in the community was enjoying some service or privilege provided by government.

In 1840, it had been agreed that the job of government was to maintain through general laws, equal rights for all before the law and special privileges for none. Before 1940, the cynics had coined a new slogan, "special privileges for all and equal rights for none." From 1930 on, socialists were urging that government must go still further and plan and manage the economic system as a whole rather than merely intervene at particular points as they were doing prior to the outbreak of war in 1939. During World War II, we have seen this done, although not with the measure of public ownership which socialists desire. What the future scope of government functions will be, it is impossible to say. They are unlikely to decline to the 1939 level. But for present purposes, it will be sufficiently revealing to indicate something of how matters stood at that date.

The war reveals too, in a striking way, how the sheer physical limitations on government action have declined.

Transport and communications are now so highly developed that central governments can overcome the handicaps of time and space sufficiently to direct the energies of half a continent. And productivity is now so great that government can absorb for its purposes, including war, well over half the national income and still leave the civilian population a tolerable standard of living.

The negative state is now only a memory and we are faced with what is called by contrast, the positive state. The government is not merely imposing restraints; it is acting positively to accomplish a wide range of purposes. In peace-time, it is charged with attaining a minimum standard of education, with ensuring public health, with guaranteeing individuals security against a wide range of misfortunes, and with regulating economic life in the public interest. In war, it must direct all the activities of the population; it must keep the common goal in sight and improvise methods of reaching it. It must do for the nation what the plantation owner did for his estate. This task requires vast resources of energy, foresight, and initiative which, in the negative state, were largely supplied by individuals operating on their own account. But even in 1939, the government was carrying on a great many activities of vital importance to the community calling for qualities of a similar character, though to a lesser degree.

It has been difficult to adapt the constitutions framed on the assumptions of the negative state to the demands of the positive state. In fact, the fighting of the two world wars substantially required the temporary suspension of these constitutions. The purpose of the separation of powers, for example, was to impose effective restraints on government, even at the expense of efficiency. When efficiency becomes the prime consideration, the separation of powers is an embarrassment. The tripartite division of powers, while it may have been an adequate instrument of analysis a hundred years ago, is defective for an understanding of the complex operations of government today. It is widely contended that these *laissez-faire* constitutions are outmoded and will have to be very substantially revised. And it is also urged

in many quarters that simple analyses such as those outlined in the last chapter do not get us at all close to the realities of present-day government. This argument will be assessed in later chapters. Here we must sketch in outline the tasks which governments are now called on to perform.

The broad patterns of government functions in Britain, United States, and Canada are strikingly similar. Britain with a more mature industrial system has moved faster and further in the provision of social security, but the United States and Canada have been catching up rapidly in recent years. On the other hand, government in North America has been called on to assist in opening up the resources of a new continent—an activity for which there has been no scope in Britain. It has not merely been a matter of building roads and railways. Governments have assisted and encouraged agriculture, mining, lumbering, and fishing in a great variety of ways. The trend now, of course, is toward conservation and more efficient use of natural resources and there is more similarity in the three patterns in this respect than formerly. In Britain, there is a distribution of tasks between central and municipal governments. In North America, federalism requires a three-way distribution between central, provincial or state, and municipal. Attention here is focused on the activities of central governments, including provincial and state but not municipal. No attempt will be made at this stage to distinguish state and federal functions.

In view of the similarity of pattern it will be adequate to sketch the newer activities of central governments in a general way without attempting a separate catalogue for each of the three countries. While some of the specific functions pointed to may not be carried on in all three countries, other functions comparable to them are almost certain to exist and the general impression will be reasonably accurate for each of them.

Regulation of Business. Regulation of business is either of a broad pervasive character affecting business generally or of a more specific kind affecting directly only particular kinds of trade or business. General regulation of business is accomplished by tariffs and by control of currency and credit.

Tariffs are now much more than the fixing of import duties and the policing of the borders to ensure their collection. The government is charged with delicate and frequent adjustment of tariff schedules to the end that native industries shall not be driven out of business by the dumping of cheap foreign goods on the domestic market. Government must be continually collecting and revising statistics on the cost of production of domestic industries, because this knowledge is necessary for intelligent adjustment of the tariff to the end desired. In this way, the government substantially protects investment in established industry and gives the employed worker in these industries at least the illusion that his livelihood is also being protected. The tariff has a powerful influence in determining what industries, and what enterprises within an industry, shall be established or maintained.

Expansion or contraction of business is determined by a great variety of factors. One of the most powerful is the interest rate, the cost of borrowing money to carry on business. This is primarily fixed by the banks as the main lending institutions. The banks are subject to close supervision and inspection by government. Also the central bank, an institution which has been established in all three countries in question for controlling the banking and credit business, has powers which enable it to exert a most powerful influence on the lending policy of the banks. And whether or not the central bank is directly a department of government, the government can exert, in turn, a powerful influence on its policy. In fact, in the long run, the central bank must accommodate itself to the main lines of government policy. Moreover, the government, either directly or through the central bank, determines the rate at which the domestic currency shall be exchanged for foreign currency. In this way, apart altogether from tariffs, the trend of imports—and exports—can be modified. This in turn has profound effects on the economy as a whole. The central bank, and departments of government associated with its work, must be gathering statistics incessantly on domestic and international trade and conducting research continually into their significance in order to know how to use their powers intelligently.

A third general kind of regulation of business is aimed at trade combinations, trusts, and monopolies in the production and distribution of goods and services. It seeks to dissolve those combinations whose activities are clearly detrimental to the public interest and to prevent particular unfair trade practices by trade associations which otherwise are thought to serve legitimate purposes. In order to keep track of the trade agreements and monopolistic practices in various industries and estimate their effect as well as to secure the evidence necessary for prosecuting offending combinations, government must maintain a staff of economists and accountants continuously engaged in investigation and research.

Various trades and types of business have been singled out for more specific regulation. The most important group are the public utilities, those industries which produce an essential service for the public but which, for one reason or another, have a tendency to monopoly with its attendant evils. All transport and communication enterprises are in this class; railways, tramways, motor transport, air transport, shipping, telegraph, telephone, and radio. The gas, water, and electric power industries also fall in this class. A great variety of regulations which cannot be detailed here are imposed on them by government.

Generally speaking, no one can enter into any one of these businesses without getting a licence or a certificate that additional facilities in the industry are needed for the public convenience. The rates to be charged and the extent and quality of the service to be rendered are subject to minute governmental control. These rates cannot be fixed without taking into account the rates of return which particular enterprises are to be allowed to earn for their owners. In the transportation businesses, a great many regulations are concerned with safety: licensing of pilots and air-fields, the load-line on ships and the licensing of masters and pilots, inspection of brakes, speed limits, level crossings, and the like. It will not do for a government to make haphazard decisions on these matters. It obviously must have at its command a great array of economic, accounting, and engineering talent in order to decide on rates of return, rates to be charged to

the public, standards of service, and safety measures. And the job cannot be done once and for all. As costs fluctuate, adjustments must be made in the rates to be charged. Technical advances will call for repeated revision of the standards of service and safety.

The financial enterprises of insurance, trust, and loan companies are subject to close government supervision designed to ensure fair dealing and to safeguard their financial position. They must secure an annual licence and often are required to make deposits with the government covering a portion of their obligations to their clients. They must make annual returns describing their operations and undergo annual inspection by government officials. If their financial practices have been reckless or their financial status is seriously impaired, their licences may be modified or cancelled.

Before a corporation can be formed to conduct any enterprise, the promoters must secure a charter, or grant of incorporation, from government. All corporations which, on incorporation or during reorganization, wish to sell an issue of securities to the public are required to make a fair disclosure of the facts relevant to the enterprise. Through refusal to authorize particular issues of securities, and through regulation of brokers and stock exchanges, governments try to prevent reckless and fraudulent misrepresentation in the issue and sale of corporate securities.

Scores of other kinds of businesses are subjected to licence and inspection generally for police, health, or safety purposes. The regulations involved need not be described as they do not profoundly affect the economic life of the community and do not require the accumulation of records, the marshalling and interpretation of statistics, or the intricate economic and engineering knowledge needed for the working of the more far-reaching controls already described.

Labour Regulation. The bringing of large numbers of workers into factories or shops to work under contract for an employer or manager has raised many acute social and economic problems with which governments have tried to deal. Government officials frame, and enforce through periodic inspection, factory, shop, and mine regulations

designed to ensure safe and sanitary working conditions and to regulate hours of work and working conditions for women and children. Government administers an insurance scheme whereby employers are compelled to provide compensation and rehabilitation for their injured workers whatever the cause of the injury may have been. The burden of industrial accident and industrial diseases which used to fall mainly on the worker and his family has been turned, through government action, into a cost of production which falls on the purchasers of the products of industry.

Minimum wages and maximum hours are fixed by the government in great detail for most industries in Britain and Canada. In the United States, such regulations have been limited, in the main, to the employment of women and children because until quite recently minimum wage laws for adult males were held to be unconstitutional deprivations of liberty without due process of law.¹ In all three countries, government enforces an immigration policy which limits the entrance of foreign workers into the country to compete for jobs with the native-born. Governmental measures in support of the unionization of labour and collective bargaining have been introduced. Government also provides a conciliation service for mediating in industrial disputes and, in some vital industries, it insists on a public investigation and strenuous effort at settlement before a strike or lockout can be called.

Government is thus involved in continuous study of wages, costs of living, standards of living, the trade cycle, industrial diseases, and safety devices. If it is to perform adequately the functions it has undertaken it must be steadily revising its regulations in the light of accumulating knowledge and changing conditions and it must put drive and energy into its inspection to detect, punish and prevent evasions.

Government Economic Enterprises. In some industries, government tries to get a simple solution of the complex problems of business and labour regulation by direct government ownership and operation. Where not so long ago, there was only the post-office, there are now a number of

¹See p. 36 ante

comparable enterprises managed by the government. Apart altogether from the ownership of waterworks, gasworks, tramways, and electric power plants by municipalities, central governments in one or more of the three countries in question own and operate railways, canals, telegraph, telephone and radio transmission systems, hydro-electric power and liquor distribution systems. While governments have undertaken a wider range of economic enterprises in Britain and Canada than in the United States, the Tennessee Valley Authority is the most diversified government economic enterprise to be found in any of the three countries.

In such undertakings, government sets out to make itself a model employer as well as a model producer and distributor of goods and services. To do this, it has to wrestle with the same problems which plague private enterprise and which call for sympathy and imagination. It has to find the energy and resourcefulness which alone make any enterprise efficient and it has to find them without the incentives of profit and the spur of competition which have done much to maintain healthy vigour in private enterprise. When government goes into business, business methods have to be carried over into government. These methods are not the methods of the policeman and the judge. Here perhaps more than anywhere else, the requirements of the positive state are made clear.

Agriculture. In North America particularly, government now takes the lead in promoting the application of science to agriculture. Most of the measures take the form of free services to farmers. Relatively few of them are police regulations. The most important of the latter type are the regulations for control of animal diseases and plant pests, giving the government powers of quarantine and wholesale destruction of plants and animals to check the spread of such threats to agriculture. The effort spreads out as far as the control of the commercial poisons offered to combat pests and to the supervision of nurseries which distribute stock. There can be no traffic in queen bees unless they have a certificate of health from the department of agriculture. Alongside these powers goes continuous research into the

origins and causes of, and the means of controlling, plant pests and animal diseases. For example, decades of research have been put into the development of strains of wheat which will resist rust and the sawfly.

This, however, is only a small fraction of governmental research into agricultural matters. Attempts are made to improve every breed of agricultural product, whether plant or animal. The search for champion hens and champion cows, longer bacon pigs, longer ears of corn, and smaller *petit pois*, never ends. Experimental farms carry this work into the field and explore the methods of culture best suited to particular districts. Soil surveys discover deficiencies of soil and aid in other extensive governmental efforts to deal with drought and erosion.

Improved methods are of little value unless widely adopted, and education of the farmer is pushed in various ways by illustration stations, extension services, agricultural fairs, county agents, distribution of pure bred stock, and a barrage of bulletins. Increased production needs wider and better markets. Government tries to find new markets at home and abroad and provides a marketing and intelligence service which analyses market trends and possibilities. Reliable grades and honest packaging are important aids to marketing. Government now requires that most agricultural products going outside a local market should be sold according to specified grades and in standard packages. Government devises the specifications and employs an inspectorate to see that the regulations are obeyed. Continuous research must go into the establishment and improvement of grades if they are to have their maximum usefulness. Some of these grading regulations are pure food regulations and thus are matters of public health to be considered later.

The middleman who markets farm produce has always drawn the wrath of the farmer. Government now intervenes at many points in the marketing process on behalf of the farmer. It imposes regulations on stockyards and commodity exchanges such as the grain exchange. It puts its influence and authority behind schemes for co-operative marketing, and for stabilization of prices and production, of

a number of agricultural products. It supports, if it does not enforce, efforts to limit acreage and thus to maintain prices. The Canadian Wheat Board indicates how far such measures may go. It is an agency of the Dominion government for marketing the wheat crop at a politically determined price. Similarly, in all three countries, the laws of supply and demand are challenged by the laws of the government in fixing the price and regulating the distribution of fluid milk in urban areas.

The range and variety of government activity in relation to agriculture defy summary description. Enough has been said to afford further illustration of the main points that government provides many valuable services and privileges to different groups in the community, and that effective provision of these services makes demands on governmental organization and personnel which were never dreamed of in the days of the negative state.

It may be added here that the other producers of primary products in the forest and fishing industries also get similar assistance from government. However, these types of aid have been launched only recently and, in the nature of things, cannot develop as luxuriantly as the agricultural services. It is enough to recall that other groups get similar assistance from government.

Public Health. Public health has long been a charge of government but measures to promote it remained rudimentary until the scientific discoveries of the last century revealed the causes of a great variety of diseases and the means necessary to control them, and they remained relatively unimportant until urban concentration and rapid means of transport changed entirely the problem of public health. Since that time health services of a range and variety comparable to the activities noted in the last section have been developed. The bulk of these are still carried out by the municipal governments but central governments exercise close control and supervision over the municipal health agencies. Sanitation measures must meet government standards and every municipality must maintain a public health organization which meets certain minimum

specifications. These standards are enforced by frequent inspection. Furthermore, governments enforce many precautions against the spread of infectious diseases, and the outbreak of an epidemic brings extraordinary powers of the central government into action.

Government makes available a great many health services for local governments and for individuals. Diagnostic clinics aid in the discovery and identification of diseases. Laboratory analysis of a great variety of noxious specimens is offered and vaccines and serums are manufactured and distributed. Research is carried on in the fields of sanitary engineering and preventive medicine. Statistics are collected and studied and a programme of public education in health matters is advanced by demonstrations, exhibits, bulletins, and motion picture films.

Besides making grants to aid in the maintenance of general hospitals, government provides special clinics and hospitals for those suffering from particular diseases such as tuberculosis. It maintains institutions for the mentally ill and the mentally defective. Special health services are given to school children and special attention to maternal and child welfare.

Pure food laws establish standards of quality designed to prevent dangerous adulteration of food. Samples of food offered for sale are collected and analysed and frequent inspections of food processing plants are made. Government inspectors are permanently installed in the canning and meatpacking plants. The sale of patent medicines and narcotic drugs is subject to regulation. Numerous other interventions in the field of public health could be cited.

Social Security and Other Social Services. Governmental research into the incidence and causes of disease proved the close connection between poverty and ill-health and was thus one of the prime causes of the demand that government should supplement charitable relief of poverty. The chronically poor remain, as they have been for centuries, the responsibility of municipal governments and philanthropy. Central governments have, however, undertaken to ensure individuals against misfortune arising from certain specified

causes. Sometimes the technique is that of compulsory insurance, requiring persons to contribute to a fund which the government supplements, as in the case of insurance against unemployment. Sometimes it takes the form of outright grants from the public treasury as in the case of allowances to deserted or widowed mothers, assistance for needy and neglected children, and relief to unemployed workers not covered by unemployment insurance. But whether through compulsory insurance or through outright assistance, government comes to the aid of the aged and blind and other classes of needy persons, as well as the ones mentioned above.

Other social services of a somewhat different character may be mentioned here. Government maintains an employment service which assists workers in search of a job. Substantial grants are made to municipal governments in aid of elementary, secondary, and vocational education. Central governments fix the curriculum and try to maintain standards of instruction by inspection and examination. Governments make grants to colleges and universities and sometimes operate them as state institutions.

Conservation of Natural Resources. Public health and social security measures are aimed at conservation of human resources. In recent years in North America there has been a steadily growing substantial effort by governments to conserve dwindling natural resources. Restrictions on the taking of fish and game have been tightened and steps toward enforcing a more careful timber-cutting policy have been taken. Fish and game are also ravaged by disease while fire and insects are the heaviest users of the forest. Forest protection services have been established by government and, at the same time, reforestation projects are being launched, pollution of rivers and streams is being curbed. Fish hatcheries and wild life sanctuaries are government enterprises. Strenuous government action is being taken to restore the lands ravaged by drought and erosion.

Such measures are not likely to bring significant results unless action is guided by scientific knowledge. So intensification of research goes hand in hand with preventive and restorative action. Even then, the co-operation of the public

must be enlisted and government takes up the role of educator and propagandist for conservation. Conservation is no longer a matter of sprinkling the country with a few fish and game wardens. It requires a dozen different kinds of scientists and research laboratories, a large field service staffed by men with highly specialized training for their jobs, a diverse apparatus for fighting fires and insects and assisting nature to multiply. In another direction, it develops into a large project of public education. Perhaps the best illustration of the range of conservation measures now carried on by governments is to be found in the operations of the Tennessee Valley Authority. Enforcement of conservation measures by policemen and judges is now a minor, though necessary, part of the conservation programme.

Other Functions and the General Trend. This is a comprehensive but by no means an exhaustive enumeration. The list of public works which governments maintain or subsidize goes far beyond those contemplated by the laissez-faire tradition. For example, a great network of highways and not merely a few trunk roads for military purposes is now maintained by central governments. Also, the taxes now levied by governments are not limited to the amounts required by the government to finance its direct expenditures. Federal governments levy taxes and make grants to the provinces and states to assist the latter in carrying out their extensive functions. State and provincial governments, in turn, levy taxes in order to make equalizing grants to municipalities of disparate financial capacity so that all municipalities can maintain a certain minimum level of services. In this way, as well as by direct social security measures, governments are engaged in an extensive compulsory redistribution of the national income.

Each of the functions of government enumerated here is a matter of common knowledge although few perhaps realize the grand sweep of the operations as a whole. In the main, these are the activities which governments carried on in 1939 and almost none of them were carried on by government in 1850. Since 1939, for the purpose of prosecuting the war, government has gone very much further. Some new func-

tions undertaken during the war or suggested by conditions arising out of the war will no doubt be adopted as permanent measures.

It is probable that there will be a considerable extension of social security measures and a multiplying of the efforts put into conservation of natural resources. Government will likely support still further by its authority the unionization of labour, and other war measures regulating the relations of labour and management in industry may be continued. Floor prices for natural products, particularly farm produce, will likely be fixed, not by the higgling of the market but by government decree. Imports are likely to be rationed and controlled and some exports will almost certainly be subsidized. Further governmental regulation of business may be expected. In fact, every new intervention by the government in the economy corrects some evils but, at the same time, sets going other dislocations which, in turn, cry for something still further to be done. If these developments take place, they will greatly intensify the problems of government. But as already stated, present discussion will assume for most purposes the 1939 level of government functions.

No judgment is expressed here as to the wisdom or un-wisdom of any of these governmental activities and little has been said about the causes which underlie their introduction. Obviously, however, almost all of them are responses to problems which needed to be met somehow. Whether they should have been met in these particular ways, or indeed by governmental action at all, is deliberately left an open question. Some conclusions may suggest themselves later but for the moment these activities are facts which shape the structure and profoundly influence the operations of government and therefore must be accepted and kept in mind at every turn.

THE NEW FUNCTIONS AND THE WILL OF THE PEOPLE

One argument often given in support of these activities of government must, however, be dealt with. All these projects were launched by governments which were supported by a legislative majority, and almost all of them have survived

changes of government and reverses of party fortunes. So, it is often argued, they have the support of a majority of the people and from them there is no appeal in a democracy. If plebiscites were taken on particular measures separately one by one, however, it is doubtful how many of them would find majority support. Generally speaking, the truth is that many of these activities benefit directly particular individuals and groups and, in an immediate material sense at any rate, place a burden on other individuals and groups.

Social security measures benefit the recipients and are a burden to the taxpayers. A new customs duty benefits some industries and some groups of workers at the expense of the rest of the community. When a new service is provided for agriculture, it must be paid for by the taxpayer. A workmen's compensation scheme benefits industrial workers and the cost of it is passed on to the purchasers of the goods and services they produce. It may be that, in each case, there are general benefits to the community as a whole which are shared even by those on whom the burden immediately falls. But these benefits are indirect and difficult to trace and establish. Outside those who think they will be directly prejudiced or advantaged by a particular measure, very few members of the public pay attention to it and, of those, only a fraction attempts the intricate calculations necessary to trace out the effects of the measure.

Thus, in relation to almost any proposed new activity of government, there is an active interested minority pushing for it, supported less strongly by a larger group who think social justice or economic efficiency will be served by it. There is an active interested minority opposed to it, passively supported by a larger group which vaguely objects. In most cases, unless the measure is very widespread in its obvious effects or has been effectively dramatized by supporters or opponents, the great mass of the electorate are sufficiently neutral not to take a stand either way. Minorities are often able to get measures in their favour, not because of active support of a majority of the electorate but because the majority in the legislature think it is a good thing and

that, on balance, it will mean more gain than loss in electoral support.

This analysis does not apply to every new function of government, and even where it is applicable it does not begin to do justice to the complexity of the forces behind legislative action. More will be said about it later. At present, we are concerned only with its general significance, namely, that modern legislation is greatly influenced, and often determined, by the push and pull of interest groups. Economic specialization has created almost innumerable groups, each with a special economic interest. Ease of transport and communication has enabled the like-minded across the country to seek one another out and form associations on the basis of their special interest. A thousand religious, philanthropic, cultural, economic, and recreational associations flourish and they all have purposes which can be promoted by one kind of government action and impeded by another.

The twentieth-century phenomenon of governments undertaking activities for the benefit of special groups is partly due to the ubiquity of special interests and partly the cause of further strengthening of these group interests. They thrive on the benefits they can get from the government for their members and on the defence they can put up against legislation prejudicial to their interests.

Normally, most individuals identify themselves more closely with their own special interests—they may belong to any number of different interest groups—than with the general common interest of the community. The immediate loyalties are continuous and intense, the wider loyalties and interests are tenuous and only spasmodically cross the threshold of attention. The industrial worker, the manufacturer, the farmer, see much more clearly the advantages of a rise in their money income as producers than they do their corresponding disadvantages as consumers (a general common interest) which result from the successful effort of each group to raise its own income.

There should be no need to illustrate this point. During the war, when the most obvious and vital of general community interests were at stake, we saw producer groups of

every kind demanding legislation which would maintain or raise their money income despite the patent fact that, to win the war, the general standard of living had to be lowered. This is not due to a callous indifference to the general interest but to the greater immediacy and clarity of our special interest and to the difficulty of comprehending that our narrow advantage may be at variance with the general interest. So, much of the extension of government activity in the twentieth century comes, not from a widespread general conviction that the public interest will be served thereby but from the demands which interest groups, in combination or competition, press upon the government and the legislature.

AGGRANDIZEMENT OF THE EXECUTIVE

One other general result of great significance involved in the burgeoning of government activities must be attended to here. The positive state and the nature of the tasks it undertakes have aggrandized the executive branch of government. For example, fifty years ago the law as enacted by the legislature defined in general terms the circumstances under which an employee could recover damages from his employer for injury suffered in the course of his employment. If he suffered injury and the employer denied responsibility, the employee had to bring an action in the courts where a judge decided the issue and awarded the damages, if any. Whatever damages he got, he then spent either in paying his doctor or having a day at the races as he saw fit. The executive had no part in the process at all unless the employer refused to pay the damages the court had awarded.

The result is entirely different with the present-day workmen's compensation laws already briefly described. The legislature has outlined in a general way a scheme of compulsory insurance against industrial accident and disease, requiring a fund to be built up by contributions from employers. The carrying out and enforcing of this law is given to an executive agency, a Workmen's Compensation Board or Industrial Accidents Commission. Injured employees make claims to the Board which has a substantial discretion as to liability and amount. The courts have no longer any

extensive functions in this field.² The Board is instructed to devote the amount awarded to the rehabilitation of the worker. It is expended on maintenance of his family, medical expenses, and retraining for a new job as the Board sees fit.

The Board also has important preventive powers. It can order the use of safety devices in a factory and it can increase the premium payable by employers with a bad record of accidents. This involves not only a field force of inspectors going from place to place but also the compilation of statistics, an engineering branch, and a staff for research into the causes and incidence of industrial accident and disease. The Board soon knows more about industrial accidents than anyone else and therefore can contribute more ideas for the amendment and improvement of the workmen's compensation laws than the legislature.

Moreover, its statistics and its researches show that the health conditions of the worker outside the factory, his education and training, even his biological inheritance, are important factors in the incidence of industrial accident and disease. That is to say, a Board which wants to do a really effective job will be pressing constantly for an extension of its powers, and if it were not checked by the legislature it might soon bring public health, education, and eugenics within its purview. As it is, the administration of the workmen's compensation fund brings a significant enlargement of the executive including an inspectorate, a claims division, an engineering division, medical advisers, a social welfare service, and a research bureau as well as many routine and clerical workers. This agency speaks with great authority on its operations and its voice is likely to be heard in favour of rather than against an enlargement of its powers.

This matter is so important that, even at the risk of boredom, another illustration must be given. Not so long ago, the regulation of public utilities, those essential industries enjoying for one reason or another monopoly advantages, was left to the legislature and the judiciary. The law provided merely that railway, telegraph, telephone, and electric power

²In Canada and most of the states of the United States In Britain, the courts still determine whether the employee is entitled to compensation.

companies must provide reasonable services to the public and must not charge unreasonable rates. Anyone who was aggrieved by the rates or service had to bring an action in the courts asking for a decision that the rate charged him was too high or the service given him inadequate. Now the legislature makes provision for an executive agency, a transport commission or a public utilities commission.

Aggrieved persons apply to this agency and not to the courts. It determines rates in great detail. To do this, it has to decide what is a reasonable return on the investment of the public utility company. It is thus necessary to decide what the investment shall be taken to be, the nominal capital, the actual value of the assets committed to the adventure (i.e., ruling out watered stock), their replacement value, or the amount which prudent men would have invested in this particular enterprise. Allowances for depreciation and obsolescence have to be calculated. The commission lays down precise regulations about standards of service. A railway may be required to run more trains, or more cars per train, or forbidden to discontinue particular trains. An electric utility may be required to step up its voltage or extend its lines. This involves finding a very nice balance between public needs in the way of service and the ability of the company to furnish them. New capital seeking entrance to the industry must satisfy the commission that it is in the public interest that the industry should expand, a judgment which calls for a great range of knowledge. This executive agency must go deeply into the economics of the industry, the financial history of particular companies, and relate these to what it is thought the public needs, i.e., the public interest. Expert staffs of economists and accountants are needed.

Moreover, safety is an element in reasonable service, particularly in the transport utilities. The commission must develop minute regulations as to the safety measures to be taken. The devising and improving of these regulations and the enforcement of them require an inspectorate and an engineering staff always at work surveying existing facilities

in the industry, investigating accidents, and testing new safety devices.

Here again, a large staff is built up; its activities give it unique knowledge about the public utility industry and reveal new ways in which it can improve its regulation by extending the scope of its control. Its experience is always suggesting changes in the laws for the regulation of public utilities and thus it has great, and often decisive, influence when the legislature comes to amend the law.

In almost all the functions of government outlined in this chapter, similar enlargements of the executive have taken place. The New Deal alone in the United States swelled the civil service by some 300,000 persons. The large staffs which carry out the intricate detail of these tasks of government are generally referred to as the administrative and some have described it as a fourth power alongside the legislature, executive, and judiciary. In fact, it is a part of the executive although it has swollen that power out of all recognition and radically changed its character. Where the executive formerly was something of an automaton carrying out the dictates of legislatures and courts, it now does a great deal of detailed legislating on its own in the course of administration, it is a powerful influence in the determining of legislative policy, and it has everywhere encroached on the judiciary. Its size and the scope of its operations have created a new problem of internal management. How is the President of the United States to co-ordinate and direct the energies of over a million civil servants in the employ of the federal government? No matter what problem of present-day government is under consideration, it will be found to have been intensified, if not entirely created, by the remarkable developments we have been considering.

This great service and regulatory apparatus called the administrative is also known, in terms of alarm or contempt, as the bureaucracy. It is not always understood that it is the necessary concomitant of the positive state. Most people approve of some or other of these new functions of government and almost all castigate bureaucracy, associating it with those activities of government of which they disapprove.

But the general effect of the great extension of state action on government, and particularly on democratic government, has never been adequately explored. Succeeding chapters will indicate trends and suggest probabilities.

CHAPTER IV

THE EXECUTIVE—THE MAINSPRING OF GOVERNMENT

WE have distinguished one of the organs of government as the executive and described its function as executing or carrying out the law. It is now necessary to carry the distinction further and define the function more precisely. In the broadest sense, the executive includes all those engaged in or associated with the active manipulation of men and things in the name of the government. The discussion of the scope of modern government action has indicated the extraordinary range of activity involved.

The executive in this wide sense includes the chief of state, be he King or President. It includes the small group who, through their positions as heads of the great government departments, are in direct command of the manifold activities of government. This is the ministry or cabinet, known in Britain as the government, in the sense of Mr. Attlee's Government, and in the United States as the administration, in the sense of Mr. Truman's Administration. For convenience of nomenclature, we may call them the temporary, or political, executive. The executive also includes the tens, and even hundreds, of thousands of civil servants who may be described as the permanent executive because, in the main, they do not now change with a change of government. It also includes the armed forces who, while they cannot be said to carry out the law, do act as agents of the government in whatever they do.

Indeed, it is a gross understatement of the function of the executive to say that it carries out the law. It is often said that the executive carries out the will of the state. If we leave aside the metaphysical question whether the state has an identifiable will, the statement is helpful because it directs attention, not to specific laws which are enforced but to a complex total of actions of a bewildering variety, many of

which are not the execution of laws but discretionary actions which the law permits without commanding. For example, the executive runs the vast household of the modern state, buying rope for the navy and pens, ink, and paper for the civil service, hiring servants, constructing or renting office space, and a thousand other jobs of domestic management. The government provides a great many services which cannot always be described as the carrying out of mandatory laws. There is no law requiring the government to conduct geological surveys, diagnostic laboratories or experimental farms. They are lawful because the legislature has granted money for the purpose.

THE EXECUTIVE AS THE MAINSPRING OF GOVERNMENT

In sheer numbers, the executive far outstrips the other two powers. Where judges are numbered by dozens and legislators by hundreds, the executive counts in tens of thousands. Its importance is not merely numerical. In the typical nation-state of today with a central government exercising a wide authority over an extensive territory and millions of people, the executive is the mainspring of government. It makes the wheels go around. Germany and Italy have proved that nation-states can continue in some fashion without a functioning legislature and without a judiciary of significant independence. But when the executive breaks down, the central government collapses.

The reasons for this are quite simple. We know that large business enterprises will not run without the guidance of great executives. Government today, in terms of the scope of its operations, is the largest of all enterprises. It therefore must have leadership. That leadership must be continuous, always devising and revising. It must be informed leadership. It must know the objectives of all the activities carried on. It must also know, or have readily available, detailed information on the problems government is supposed to be solving. Government cannot undertake to improve public health or public education unless it knows in detail what is wrong. It cannot regulate and promote agriculture unless it knows a great deal about agriculture. Even then, the

problem is often so complex that trial and error is the only way to approach solutions. So, in order to decide intelligently what to try next, the knowledge gained in the course of administration is indispensable.

There is a steady accumulation of this kind of information in every government department which is effectively organized and there is much more of it concentrated there than anywhere else. It is not that the executive knows best what should be done; generally it does not. But it has a body of information which is indispensable in deciding what can and what cannot be done. The legislature has not got it, and this explains why most legislation today is framed by the executive and the role of the legislature is mainly that of criticizing, rejecting, or approving executive proposals. Much more will have to be said about this later. For the moment, the point is that if the vast apparatus of present-day government is to perform satisfactorily the tasks laid upon it, there must be continuous initiative by a body which knows the detail of the work and imparts drive and direction. This initiative must come from the executive itself. The legislature is too far away from the complexities of administration; it is not continuously and exclusively absorbed in the study of these matters and it is always too numerous to give unified and vigorous direction to the daily work of government.

The fact is that the emphasis in the literature of the last hundred years on the vital role of the legislature in maintaining democratic control of government has led many to the unwarranted belief that the legislature is the government. Reference to history as well as to current realities should correct this mistaken impression. Historically, the origin of central government almost everywhere is in a war-leader or a conqueror who seizes control of a territory and uses the reserve of force at his command to control the population for ends which need not be inquired into here.

At this stage, the analogy is the slave plantation and the executive is everything. The limitations on it are the limitations of nature and the passive or other resistance of the population. There are no internal restraints. To take only one but not an isolated example, the government of William

the Conqueror was not distinguished from his own personal household. Legislative and judicial institutions emerged later and only slowly became effective brakes on executive action. The essence of government is an executive. The legislature and judiciary are merely the instruments for constitutionalizing it.

No matter how fully representative a legislature may be, it cannot govern the country. The great weakness of the Third Republic in France, whatever the deeper causes of its collapse, was that the legislature would not abide a strong executive. Lacking this, there was no effective leadership to prepare the country to meet the Nazi menace or to withstand the shock of military disaster.

To insist on the executive as the essence of government is not a depreciation of the legislature and judiciary. Rather it reveals the tremendously important and only effective role of the legislature as a check or brake on an energetic executive. This is vital for the maintenance of constitutionalism; an importance underlined by Lincoln's doubt whether a government (i.e. an executive) which was strong enough for surmounting emergencies would not be too strong to be kept under effective control by its people. With the aggrandizement of the executive through the great extension of governmental action, and its need for vigour if it is to do efficiently all the tasks assigned to it, the need for checks on the executive is greater than ever before in the history of liberal democratic government.

Accepting the necessity for strong executive leadership, it should be clear that that leadership is not provided by the executive in the broad sense including tens of thousands of civil servants. Leadership is always the function of one or a few. Too many cooks spoil the broth and what holds for soup holds for government as well. Every numerous body which wants to accomplish anything has to set up an executive committee and there is ample testimony that if such a committee is to give really vigorous direction to affairs it should not exceed ten and had better be five. There is indeed an argument that a plural executive suffers too much from cross-purposes and indecision, and that the executive should be

headed by a single person. Neither the shareholders nor the board of directors of a great business enterprise try to run the daily affairs of the enterprise. They appoint a general manager who is popularly known—and revered and despised by turns—as a “big executive.”

In the preceding paragraph a quite different but commonly used sense of the word “executive” emerges. Executive means commanding men and directing affairs rather than the direct and immediate carrying out of particular objectives in all their detail. This latter aspect of the work of big organizations, be they business or government, is called by contrast, administration. The executive generally means the small group, the cabinet, who head the great departments of government and thus direct the multifarious efforts of the civil service and who, because they are in command, must supply the initiative and leadership which is necessary. On the one hand, they furnish drive and direction for governmental administration. On the other hand, the civil service funnels to them the continuous stream of information and experience gained in the course of administration from day to day. Using this information to develop their own conception of public needs and keeping in mind what the legislature wants or will stand for, the executive matures legislative proposals for the consideration of the legislature.

In these functions, they are greatly aided by a small group of higher civil servants, their immediate subordinates in the departments, and it is almost impossible to disentangle the separate contributions of the two groups. There are some who say that this small group of civil servants makes by far the greater contribution and are the real governors of the modern state. However, because the executive has the responsible command and is always contributing fresh ideas not gleaned from the civil service, they may justly be described as the mainspring. Therefore, the discussion in this chapter will be directed to the executive in the narrow sense.

THE CHIEF OF STATE IN BRITAIN

A discussion of the British executive must first take account of the position of the King. In wraith-like legal

formalism devoid of substance, the King is the executive. The members of the cabinet are His Majesty's ministers who tender him advice. While in reality they take all responsibility for actions of the government, yet legally their acts are the acts of the King. Even the judges are His Majesty's judges though no King since the Stuarts has interfered with the course of justice. The King must assent to bills before they become law but the last refusal was in 1707. The King is the head of the state but it is an office devoid of power. The legal rule that the King can do no wrong combined with the conventional rule that the King must act on the advice of his ministers shifts both responsibility and power to the ministers. The legal forms are merely echoes of a time when the King had the reality of power.

Out of the wreck of his former pre-eminence the King has saved what Bagehot called, "the right to be consulted, the right to encourage and the right to warn." Because his consent is required for statutes and many other official acts, he could not well be deprived of all contact with affairs of state. His ministers keep him advised on major issues and they receive in return such counsel and caution as he cares to give them. Governments change and ministers come and go. A King who has had many years on the throne has the opportunity for a wide grasp of public affairs. If he joins study and effort to ability, his position obviously enables him to wield great influence. His hand is strengthened by the social popularity with the masses of the people which the Monarchy has enjoyed in the present century. Queen Victoria exercised these three rights to the full and not without effect. Both she and Edward VII had very substantial influence in foreign policy. George V took a great interest in domestic matters and had an influence which it is not yet possible to assess.

In addition, the King has certain ill-defined personal prerogatives, relics of the past which may not be without import for the future. The King appoints the Prime Minister and is under no obligation to accept advice as to the choice. As long as one party has a clear majority in Parliament and that party has an acknowledged leader, the King has, in

reality, no choice. But if the Prime Minister dies or resigns, if the majority party has no acknowledged leader or if after a three-or-more-cornered election fight no party gets a clear majority, the King has the personal responsibility of picking a Prime Minister—power as well as influence. This function may assume critical importance if three or more political parties become a permanent feature. George V is credited with a leading role in the formation of the National Government coalition under Ramsay Macdonald in 1931.

The King has the formal legal power to dismiss his ministers and it is sometimes argued that he may constitutionally dismiss them on his own motion if he believes that the cabinet, while holding the support of a majority in Parliament, has decisively lost the support of the electorate. More accurately, it is suggested that the King, if he so believes, may threaten dismissal as a means of securing the consent of the Prime Minister to a dissolution of Parliament, thus bringing on an election to test the matter; and that if the Prime Minister refuses, the King may dismiss the cabinet.

It is also maintained in some quarters that in certain circumstances the King may refuse the request of the Prime Minister for a dissolution if he has grounds for thinking that an alternative government can get the parliamentary support which the Prime Minister has lost—an obvious problem in a Parliament with three or more parties. It is contended that the King is the guardian of the constitution and that if a government is flouting the will of the people, or is seeking to recoup its fortunes by suddenly springing an unnecessary election on trivial grounds, he may intervene.

All matters touching the relationship of King, cabinet, and Parliament are supposed to be settled by the conventions of the constitution, resting on past precedents and practice. But on these two points, the precedents are confusing and inconclusive, affording room for difference of opinion. However, it can be said that royal intervention has far greater dangers for the constitution than those it is intended to meet. If the King turns out to be wrong in his judgment and the country supports the government he threatened to dismiss, or if his alternative government gets no parliamentary support

and the succeeding election returns the Prime Minister to whom he refused a dissolution,¹ relations between the King and the cabinet are bound to be seriously strained. The King will be blamed for taking sides and if the political party which stood to benefit from this intervention does not repudiate his action, they will be turned into a party of the King's friends—a return to the days of George III!

In trying to guard the constitution, the King may wreck it. If he is to retain his throne in a system of parliamentary government he must, at all costs, retain his neutrality. He must bide his time and wait for the electorate to say whether the cabinet has lost its sympathy. Even at the expense and confusion of an unnecessary election, he must let the electorate punish an over-crafty cabinet.

Yet the breakdown of the traditional two-party system into three or more parties of comparable strength will put an alarming burden on the Chief of State. He has to find a Prime Minister who must be someone who can throw together a coalition. At times, it will be tempting, and even on occasion legitimate, to try other combinations without resorting to a dissolution and a new election every time a government is defeated in the House. The genuinely important present-day function of the King is to stand as a symbol of unity and there is a natural disposition to hope that the King may express that unity at times when the factiousness of parties threatens to make orderly government impossible. No doubt the King can appeal to whatever unity underlies party faction and, in so far as it exists, exert a moderating influence and perhaps tide the country over particular crises. The continuity and security of his office should enable him to take an objective view not always reached by the leaders of political parties. But it will be suggested later that the splintering of the two-party system is perhaps symptomatic of a deeper disunity, and if so, the King may get little more for his pains than charges of partisanship.

The effectiveness of the King (or the Crown) as a symbol of unity, as long as the exigencies of his office do not require him to take sides, is not open to question. Steady allegiance

¹ i.e., the facts of the Byng-King incident in Canada in 1926.

to Country, Nation, Community, is difficult to obtain because most people are not greatly moved by abstractions. The living figure brings the argument for subordinating our desires to the good of the whole down to the level of common experience. The King can call men to arms more effectively than can the Country or the Nation. The good that governments do can be ascribed, through the King, to the people; the evil they do can be pinned on the ephemeral government of the day. The opposition which obstructs the government of the day maintains its prestige more easily because it is His Majesty's Loyal Opposition. It is loyal to the permanent common interests and fundamental aspirations of the people while opposed to the audacity of a temporary parliamentary majority.

In fact, the symbol has triumphed over the man. As the case of Edward VIII shows, a King who does not outwardly conform to the proprieties which move the bulk of the nation must go. Some are disposed to think the symbolism too powerful. The King is inevitably a symbol of conservatism, of what has been revered in the nation's past. By nurturing that reverence and projecting it strongly into the present, the King may retard or stifle necessary social change. The King cannot lead in a new attitude toward divorce; he must be a symbol of old attitudes. Yet there is no doubt that in Britain the King is identified with the fundamental aspirations of the British people. Even the Labour party which wants to change much in Britain does not want to abolish the Monarchy.

The King is a symbol of unity not only for Great Britain but for the British Commonwealth of Nations as well. The British Government and Parliament no longer have any control over the Dominions. The Dominions are autonomous and independent. They are bound to Britain and to one another only by the invisible ties of common language and common tradition. The Crown is the only institution common to them all and thus the only visible link between them. The strength of this symbolic link is hard to estimate but no doubt it is considerable.

THE CHIEF OF STATE IN CANADA

The Chief of State in Canada is the Governor-General. He no longer represents the British Government but is the personal viceroy of the King. He is appointed by the King solely on the advice of His ministers in the Dominion of Canada, a minister of the British Government concurring formally in order to authenticate the appointment. He holds "in all essential respects, the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty in Great Britain." In so far as he represents the King, he is the Canadian concretion of the symbol of unity.

But in his own person, he cannot hope to have the influence which it is open to the King to exercise in Britain. His term of office is short, his knowledge of Canadian affairs is limited. Most important, he is chosen by the Canadian cabinet and may be removed by the King on its advice before his term of office expires. While the cabinet keeps him advised of its policy, it is not likely to be greatly impressed by his counsel. He can scarcely take a stand against it. And if he makes gestures in its support, his action will be regarded as a prostitution of his office for the benefit of the government of the day. Lord Tweedsmuir's publicly spoken counsel in 1938 on the appropriate attitude of Canadians toward a threatening European war was criticized in some quarters as just such an unwarranted intervention in aid of the party then in power.

Indeed, it now appears that Canadian politics are more likely to be bedevilled by three or more parties than are British politics and the Governor-General and the Lieutenant-Governors of provinces (who are the viceroys in provincial governments) are likely to have critical roles thrust upon them. Because they are temporary partisan appointments and not hereditary kings they are even less likely to perform such functions satisfactorily. The excursion of Lord Byng into this field in 1926 does not augur well for further attempts.

The only functions that can be safely ascribed to the Governor-General are purely formal. He must concur in

the summoning, proroguing, and dissolving of Parliament. The Prime Minister and the cabinet receive their authority at his hands and the formal acts of government are done in his name. He issues proclamations and orders-in-council, appoints the judges and pardons criminals but always on the advice of his ministers.

THE CHIEF OF STATE AND CHIEF EXECUTIVE IN THE UNITED STATES

It has been said that while the King of Britain reigns but does not govern, the President of the United States governs but does not reign. Being an elected person involved in partisan considerations, he arouses antagonism as readily as devotion. The constitution comes much closer to being the symbol of unity in the United States than does the President. Since the President lacks the divinity that hedges a King, the Americans have had to find their symbol in an abstraction. The Civil War was fought to preserve the Union, not the kingdom of Abraham Lincoln.

Yet the President is the formal Chief of State who performs many of the legal and ceremonial functions of the King. He opens public buildings, charity drives and the baseball season. He receives ambassadors from, and is the official medium of intercourse with, foreign countries. He is the commander-in-chief of the armed forces. He gives formal assent to legislation although his veto may be overridden by a two-thirds vote of Congress. If he neither assents nor vetoes, the measure automatically becomes law after a lapse of ten days. The regular sessions of Congress are fixed by law and he cannot change them, just as he cannot prorogue or dissolve Congress. The principle of the separation of powers limits his interference with Congress to the calling of special sessions in emergent circumstances. He may pardon criminals and formal acts of government are performed in his name.

Also, the President holds the executive power of the United States and thus he governs within the ambit of power given by the constitution. It is impossible, in fact, to make any clear distinction between his functions as Chief of State

and as chief executive. Thus he not merely signs the pardon which frees a convicted criminal; he also decides with the assistance of the Attorney-General whether a pardon shall be granted. This latter is a function which, in Britain and Canada, rests, not with the King or Governor-General but with the Home Secretary and Minister of Justice respectively. The President not only promulgates ordinances, he decides upon and takes responsibility for their content. It will be convenient, therefore, to go on at once to the official functions of the executive of the United States, remembering always that he cannot begin to give personal attention to the compass of his office and that, in most matters, the advice of subordinates has to be accepted.

The President is elected for a four-year term by an electoral college to which each of the states contributes a number of electors equal to the total number of senators and representatives to which the state is entitled in Congress. These electors, chosen as the laws of the separate states prescribe, meet and ballot for the candidates for the Presidency. The ballots are then sent to the capital and opened and counted by the president of the Senate in the presence of Congress. The person getting a majority of the electoral votes is declared to be President.

Thus far goes the written constitution which intended the electors to exercise their personal judgment in casting their ballots. But the development of two strong political parties has resulted in a complete change in the substance behind these forms. At national conventions called for the purpose, the two parties each choose a party candidate for President. In each state, state laws enable each party to nominate a complete slate of candidates (usually prominent party workers) for election to the electoral college. On the day fixed for the presidential election, the electorate in each state goes to the polls and chooses by majority vote either the Democratic or Republican slate of candidates for the electoral college in that state. When the electors so chosen meet, they always plump for either the Democratic or Republican candidate for the Presidency. But since they are pledged from the beginning to vote for the candidate

of the party which nominated them, the result is a foregone conclusion as soon as it is known which complexion of electoral slate has been chosen in each state. The later formalities of the electors meeting to cast their votes, despatch of these ballots to Washington and the grave proceedings there are now empty forms whose only justification is the necessity of complying with the precise requirements of the written constitution. The spirit changes but the letter remains.

In effect, the President is elected by popular vote. This is not quite accurate because it is still the number of electoral votes which counts and it is possible for a candidate to win a majority of the votes of the electors without having a majority of the popular vote. Woodrow Wilson in 1912 was the last President to come to office without a popular majority. But even when he gets a majority of the popular vote it cannot always be said that he is the popular choice because the process of nominating presidential candidates often produces candidates whose decisive merit is that they are inoffensive to the important diverse elements in the party.

The framers of the constitution did not want to create a replica of George III but they were fully aware that an executive must be able to act with energy and undivided purpose. To that end, they vested the executive power in one man. But one man could not run even the United States government of 1789. Executive assistants had to be provided. From time to time, Congress has created departments of the executive, to the number of ten, each of which is headed by a secretary. These secretaries early became known as the President's cabinet. They are chosen by the President with the consent of the Senate which almost never refuses to ratify his choice. As far as the constitution goes, his choice is limited only by the separation of powers which prevents a member of Congress from holding an office under the United States. In practice, his choice is to some degree limited by the political necessity of giving the cabinet a representative character. The great sections of the country, the great economic interests of labour, agriculture, and capital claim representation. Even religious denominations

and the League of Women Voters are not uninterested in the complexion of the cabinet.

THE HEAVY BURDENS OF THE PRESIDENT

The members of the cabinet direct the work of the departments and advise the President on matters coming within his charge. But they are his subordinates and not his colleagues. He may ignore their advice. He may take decisions affecting their departments without consulting them. Often, his most confidential advisers are not in the cabinet at all. Even when the entire cabinet vote against his proposal, he may say, as Lincoln did, "Noes, seven, Ayes, one: the Ayes have it!" The cabinet is not collectively responsible with the President for the decisions taken. He is the executive and he alone carries the responsibility.

Consequently, the President can do little to shift the burdens of his office. No interest of power and consequence is willing to accept a denial of its demands from the head of a department. It insists on having a decision from the President. Because the cabinet cannot compel him to take account of their views, they often do not give him the blunt, candid criticism he needs. Not being responsible along with him, they are not uncommonly irresponsible and uncooperative. He can dismiss them but it is often politically inexpedient to reveal a rift in the cabinet. There is constant danger that they—and his unofficial advisers—will become sycophants flattering him with too ready confirmation of his views. Like all men who reach a high pinnacle of authority, the President is likely to be isolated and lonely.

The steadily growing burdens of the office and the weakness of the cabinet as an advising and deliberating body have led to the establishment of a White House secretariat. As the name indicates, this secretariat is a personal staff for the President, composed of several secretaries and six executive assistants (the latter group added in 1939) as well as a numerous clerical staff. Their function is to collect information relevant to the countless decisions the President has to make and to furnish liaison with Congress and the numerous executive agencies.

A brief summary cannot give a just impression of the scope of the executive office. The constitution charges the President to see that the laws are faithfully executed. Today, this means that he must supervise the vast range of regulation and services of the positive state in so far as they are federal and not matters for the separate states. Congress annually piles new duties on the executive, many of which are really of a legislative nature.² Whether through delegation by Congress or through the inherent ordinance power of the executive, the President must now make ordinances and regulations which, in sheer bulk, dwarf the output of Congress into insignificance. He must see to the appointment and direction of the officers necessary for the tasks in hand. The Senate shares in appointments to the "higher" offices which numbered about 16,000 just before the outbreak of World War II. The "lower" offices are mostly filled by heads of departments under civil service regulations. Yet the President must often attend, perfunctorily or otherwise, to several thousand appointments in the course of a year. Subject to civil service regulations, he has power to discipline and remove the executive officers of the United States.

He has charge of the conduct of foreign policy subject to Senate approval of treaties. While Congress declares war, it is his task to see that the war is fought with energy and intelligence to a successful conclusion. Much discretionary power and heavy responsibility lie with him to deal with all emergencies affecting the nation, whether war or civil disturbance. In addition under present conditions, he must give much of his time to the developing of legislative policy, despite the separation of powers. More will be said on this point later. Finally, the administrative organization of the government of the United States is now so huge that it is a tremendous task to combat its inertia, subdue its internal rivalries, and erase its cross-purposes. Testimony is almost unanimous that the President's burden is too great for any man to carry.

²The natural query whether this does not violate the separation of powers will be considered later.

It has already been said that the positive state has everywhere aggrandized the executive. The American Presidency is a striking illustration of this truth. The executive must actually perform the tasks of modern government, tasks of such importance to the economy and community life that inefficiency or failure is serious. The President is responsible and his powers tend to become commensurate with the responsibility. In any crisis which requires something to be done, almost everyone looks to the President. The country, it is said, needs leadership and knows it. Congress, for reasons which will appear, is peculiarly unfitted to give this leadership and so it must come from the President.

The clearest and most dramatic proof of this comes in the field of foreign affairs. Congress can legislate the country into isolationism and the Senate can reject all entangling alliances. Yet the President actually conducts foreign policy and he may take irrevocable steps which in effect commit the country to intervention. While he cannot make treaties, he can make executive agreements with foreign states, which often are as effective as treaties. His power to recognize, or refuse to recognize, newly established governments can be used with decisive effect. In short, his conduct of foreign affairs, as one interpretation of Franklin Roosevelt's policy from 1939-41 would have it, may make war inevitable. And when it comes, the President who has been preparing for it while Congress has not is likely to have the major share in deciding how it is to be fought.

President Roosevelt and his advisers, and not Congress, framed the New Deal. It is true this was an emergency like war, but Theodore Roosevelt and Woodrow Wilson exercised similar, if not as great, influence on legislation. The legislation of today is often enacted in general terms. Its detailed application depends more and more on rules and regulations and particular discretionary decisions taken by the executive. The President, or his subordinates over whom he has power of control, exercise these discretionary powers and the great interests of the country find they must deal with the President as well as with Congress.

At every turn, eyes are focused on the President. His constitutional powers are not all equal to what he is expected to do. But the facts that everyone listens when he speaks and that he can reach everybody through the radio and press conferences, often give him decisive influence where he lacks power. The White House has been called the biggest pulpit in the country. The man who can sway this congregation has something better than formal power. The more serious issue is whether one man can do what is now expected of the President.

THE CABINET AS THE BRITISH EXECUTIVE

In Britain, the executive, in the narrow sense under consideration here, is the cabinet. It consists of the Prime Minister and some twenty colleagues who are appointed heads of the more important departments of the government. It has now about twice as many members as it had a hundred years ago. As the activities of government expanded, important new departments (labour, health, education, transport, and so on) were organized and room had to be found in the cabinet for their heads. It is now admittedly too large for effective discussion and decision, but the only feasible way to reduce its size is to reduce the number of important departments by amalgamation.

The King calls on the leader of the majority party in the newly elected House of Commons to be Prime Minister. The Prime Minister is then free to choose his cabinet. The only constitutional limitation is that the persons he chooses must either have a seat in Parliament or get one without delay. The linking of the cabinet with Parliament is vital to the British system.

The British Parliament is composed of two chambers, the House of Commons and the House of Lords. While members of the cabinet may be chosen from either House, the great majority are always from the House of Commons. As we shall see later, the House of Lords is not representative of the electorate and has lost most of the powers it once had. The House of Commons represents the electorate and only by retaining its confidence can the cabinet retain office.

Accordingly, most, although not all, members of the cabinet are chosen from the House of Commons. It is said that the cabinet is responsible to Parliament but it would be more accurate to say it is responsible to the House of Commons.

As a matter of practical politics, the Prime Minister in picking his cabinet has to give weight to the same kind of considerations as affect the President's choice of a cabinet. The Scots and the Welsh and the various sections of England must not be forgotten. Important social and economic interests cannot be passed over. Certain alliances within the party support the Prime Minister's leadership of his party. These must be held together and the bargains on which they are based must be kept. In addition, the Prime Minister's choice is further limited by factors which the President can ignore. Not only must the British cabinet be chosen from Parliament but certain members of Parliament, particularly of the House of Commons, have special claims to consideration. Members of former cabinets, members who are able parliamentarians and effective critics when the party is in opposition, are difficult to exclude. It may even be necessary for the Prime Minister to include in the cabinet an unsuccessful rival for the leadership of the party. There may be some claimant for cabinet rank whose only recommendation is that it will be safer to have him inside than outside. Many exceedingly delicate decisions must be made, for the Prime Minister, unlike the President, must pick a team of colleagues who will work together and always defend one another in public, who can command the respect of the House of Commons and retain the confidence of the majority therein, who can defend their departments effectively in Parliament as well as direct them efficiently.

The members of the cabinet are all ministers of the Crown, a body of equals. They need to be united by mutual respect, if not by affection. It is, of course, impossible for twenty men genuinely to agree on all major issues. At the same time, it will not do for foreign policy to commit itself to preparation for war while financial policy insists on a sharp cut in all government expenditures. Major policy is a unity; the ship of state cannot sail in different directions

at one and the same time. Hence the conventions of the constitution which seek to get from the team the concerted action which a King or a President can supply.

While each minister is responsible individually to Parliament for the operation of his department, all members of the cabinet are responsible collectively for each department and for general policy. This does not mean that all decisions are taken collectively; that would be physically impossible today. It does mean that when a minister has taken an important decision on his own initiative, the others must either stand by and defend him in the face of parliamentary criticism or throw him to the wolves. As a result, each hesitates to take important decisions without prior consultation with the Prime Minister at least, and each takes a personal interest in what the others are doing. Every decision taken in cabinet must be supported by all. A minister who is doubtful of the wisdom of a decision must either conceal his misgivings or part company with his colleagues. Lord Melbourne is reported to have told his cabinet on one occasion that he did not much care what decision was taken as long as they all told the same story. Mistakes in policy are not likely to be as disastrous to confidence, in Parliament and in the country, as are evidences of internal disagreement.

It is therefore vitally important for the Prime Minister to pick a good team and hold them together. The greatest single advantage he can have in his selection is to be able to pick them from a single political party. This ensures, to begin with, a certain similarity of view and temperament. All have strong loyalties to the party and hesitate to jeopardize its fortunes by open dissension. Equally important, the political fortunes of each are bound up with those of the party. Each knows that the party will punish revolts and this disciplines toward agreement. These favourable conditions do not exist when a cabinet is chosen from a coalition of parties. In 1932, the cabinet of the National Coalition could not agree on tariff policy and they publicly announced an agreement to differ on this question. Such a formula will work only within very narrow limits and it weakens a government dangerously.

As long as it works within the confines of a two-party system, the British cabinet is a remarkably successful device for combining vigorous and unified direction, joint counsel, and mutual criticism, and for the maturing of decisions through discussion. The frank discussion and blunt criticism which the President of the United States needs so badly, the cabinet system when working satisfactorily provides for each of its members. But it will not work satisfactorily when the cabinet has to be pieced together from two or more parties.

Every team needs a captain and this leadership is accorded to the Prime Minister. It is commonly said that the only significance of the "prime" is to make him first among equals. This phrase, however, means nothing unless it means he is something more than an equal. With the coming of the popular franchise and strongly disciplined political parties, it was inevitable that the acknowledged leader of the majority party would have significant pre-eminence in the cabinet. He is a key figure in the central organization of the party, he leads the party in Parliament and in election campaigns, and so has an immense influence on the policy and platform of the party. There is much drama in leadership and little in complex policies no matter how important they may be for the country. That section of the electorate which is not rigidly frozen in its party allegiance, does not—as indeed you cannot—separate men from measures. Thus general elections have tended to become personal contests between the leaders of the rival parties and the verdict at the polls the choice of a Prime Minister by the people. He has a mandate to lead which his colleagues lack.

The Prime Minister's pre-eminence is evident at every turn. He is the channel of communication between the cabinet and the King. In sudden emergencies where there is not time to consult the cabinet, he will act on his own initiative. Particular ministers after consulting him will often take decisions they would not risk on their own judgment. The House of Commons and the country expect him to make all important statements on policy. On advice from him, the King will dismiss a minister. Most important, it is now settled as a result of the practice of recent years that the

decision to advise a dissolution of Parliament rests solely with him. This is a heavy weapon to keep hanging over the heads of a cabinet which cannot make up its mind.

Yet he remains the captain of a team and has not become a chief executive for two main reasons. First, the other ministers of the cabinet are equally responsible to Parliament and thus have an equal personal stake in policy. He has to carry them with him. Secondly, his leadership of the government depends on maintaining control over the House of Commons. He cannot risk frequent resignations and dismissals, nor weak and unconvincing support of policy by his colleagues on the floor of the House, for that will undermine the solidarity of the party majority. The knowledge that they must all hang together or hang separately not only disposes them to earnest effort at agreement but also limits what the Prime Minister can do with his unquestioned pre-eminence. It insures the fullness of discussion and candour in criticism which the President of the United States often fails to get in his cabinet.

THE FUNCTIONS OF THE BRITISH CABINET

The broad functions of the cabinet can now be stated very briefly. As heads of departments, they furnish direction and drive to the activities of the civil service. They defend the actions of their departments in Parliament, discharging their responsibility to Parliament by answering without demur the most trivial questions in minute detail. No civil servant is ever asked or allowed to defend himself in Parliament. The minister is responsible for every action and he does not shirk it unless, of course, he can plead actual insubordination by a civil servant. Collectively, they must co-ordinate the work of their separate departments, ironing out inter-departmental disputes and thus integrating the diverse activities of hundreds of thousands of civil servants.

As an executive committee of Parliament, they must organize the work which the House of Commons particularly is expected to do in a session. They allot the time to be spent on particular matters, prepare the budget and the legislative programme which the House is to consider. They pilot

government bills through the House explaining their purpose and meaning, and defending them against criticism. Through their pervasive control, they channel the energies of the House which otherwise would be largely dissipated in discussion, into concrete accomplishments in the form of legislation.

It is through the cabinet that Parliament effects its criticism and surveillance of daily administration. On the other hand, the cabinet brings to Parliament the accumulated knowledge and experience which the civil service collects in the course of administration and which is a vital ingredient in the making of policy for the future. It brings these data forward, not in a heterogeneous mass, but transmuted into the form of proposed amendments to existing laws, or matured plans for new legislation. It almost invariably persuades Parliament to accept its programme without substantial modification because it can rely on a party majority in the House of Commons fortified in its loyalty by the threat of a dissolution of Parliament. This gives rise to the charge that the cabinet dictates to a subservient House of Commons—an indictment which will be considered later. At present, it is sufficient to see why Bagehot described the cabinet as a buckle linking Parliament and the executive (meaning the executive in the broad inclusive sense) and why it can also be described as the mainspring of government.

Directing the work of a department in a government which engages in such a wide range of activities is in itself a heavy burden on a minister even when he can rely on a number of able senior civil servants. When the tasks of co-ordinating the work of all departments, defending his department and general government policy in Parliament, maturing policy and guiding legislation through Parliament are added, it can be seen why the cabinet is said to be over-worked and the job of the Prime Minister to be an exhausting one. The Prime Minister does not normally take on the work of a heavy department but he has a host of other concerns from which his colleagues are free. There are several other posts which are sinecures such as Lord Privy Seal and Lord President of the Council. The Prime Minister generally gives these to men whose advice and assistance on

general policy are needed but who do not wish to carry exacting administrative burdens. Despite this, a number of devices to ease and simplify the work of the cabinet have had to be introduced.

For many years, it has been the practice to appoint one or more parliamentary secretaries in each of the important departments of the government. The parliamentary secretaries are members of the ministry but not of the cabinet. Such posts are generally given to promising younger men in the party to keep them satisfied for the moment and train them for higher things. They assist the ministers in administration, and in answering questions and defending their departments in the House.

As the volume of decisions to be taken by the cabinet grew and as these decisions came to involve more and more considerations, cabinet meetings became more frequent and discussions more prolonged, interfering with the time available for other pressing duties. Some relief has been found in the use of small committees of cabinet. Many problems concern two or more departments very closely and others in minor degree or scarcely at all. Small committees of cabinet are set up to try for agreement on such issues thus saving the time of the larger body for more general questions. If the committee can agree, the cabinet as a whole seldom needs to spend time on the matter. Committees are now an established feature of cabinet procedure, even flowering out into sub-committees where the issues are complex. This procedure helps to meet the mounting pressures of the positive state but its use is limited by the fact that the ministers whose departmental duties are heaviest will generally be those having to carry the major burden of committee work.

As already noted, the cabinet is now at least twice as large as it should be for effective discussion and speedy decision—another reason for seeking relief through small committees. The delay involved in reaching decisions becomes quite intolerable in time of war. Lloyd George summed it up by saying you cannot wage war with a Sanhedrim. When he became Prime Minister in the First World War, he set up a small War Cabinet of five members (later enlarged).

These had no departmental duties and devoted themselves to planning the conduct of the war. As almost every aspect of domestic policy was necessarily subordinated to the dominant aim of winning the war, the War Cabinet was, in effect, the cabinet. It made wide use of committees and sub-committees for investigating and reporting on the multitudinous matters it had to decide. The use of this small inner cabinet made for more rapid dispatch of business but the divorce of deliberation on policy from the direction of administration in the several departments proved to be most unsatisfactory.

It is worth noting that the War Cabinet in World War II did not follow the earlier precedent in this respect, but was largely composed of ministers who headed the departments most vitally concerned with prosecuting the war. The best decision as to what to do next cannot be made without knowing in detail what is now being done and bringing that experience to bear on the decision. The solution of the problem of the overlarge and over-worked cabinet is not to be found in separating the thinking from the doing. The only feasible way to reduce the size of the cabinet is to re-organize the work of the government into fewer larger departments. Unfortunately, this greatly increases the work and responsibility of ministers at the head of these mammoth departments.

The congestion of cabinet business is not merely a wartime problem. The peace-time scope of government action piles up work of comparable magnitude for the cabinet. The effective working of the cabinet system in these circumstances seems to require a concentration of still heavier responsibility on fewer men. They will be compelled to rely still more extensively on senior civil servants, parliamentary secretaries, and on many committees. The result, it is to be feared, will be that members of the cabinet will not have effective control of many matters for which they must be held responsible.

The new scope and complexity of cabinet duties is underlined by the establishment of a cabinet office under a secretary to the cabinet. Originally the cabinet was a cabal whose very existence was not free from doubt. The doubt has

vanished but the deliberations have remained secret in the highest degree. Throughout the nineteenth century, however, the proceedings of the cabinet were most informal. A minister who wished to raise a matter notified the Prime Minister beforehand and then spoke to the point at the meeting. The agenda was in the Prime Minister's head and the only record of decision was the minute made by the Prime Minister for the purpose of informing the King. Nothing perhaps so clearly reveals the easy tempo of British government in the nineteenth century as the casual jotting down of decisions on the backs of envelopes.

This lack of system became unworkable in World War I. A secretary to the cabinet was appointed in 1917, and has continued since that time. He prepares the agenda for, and keeps the minutes of, cabinet meetings. Except in cases of urgency, a minister who wants to bring a matter to cabinet must first consult the other departments concerned and then prepare a memorandum setting out the matter in detail. The cabinet office then circulates the memorandum several days before the meeting at which it will be raised. Thus all members of the cabinet are apprised in advance of the nature of the question and those particularly concerned have had time to develop their views on it. A dozen or more higher civil servants will have posted their particular ministers on how the matter affects their departments. Business can be dispatched more rapidly and with a fuller knowledge of what is involved in the decision. Extraordinary precautions are taken to ensure the secrecy of these memoranda and of the minutes of cabinet meetings.

THE CANADIAN CABINET

Canadian government, apart from its federal aspect, is modelled on British government. The Canadian cabinet performs the same functions and stands in the same formal relationship to Parliament as the British cabinet. The acknowledged leader of the majority party in a newly elected House of Commons becomes Prime Minister. He picks his colleagues from the supporters of his party in Parliament. The cabinet so selected is individually and collectively re-

sponsible to Parliament for the conduct of administration. Yet in the construction of a cabinet and in its methods of working, there are significant differences from the British practice.

Most of the differences spring from two sources. First, the Dominion of Canada is a federation of nine distinct provinces, a fact which must always be remembered when a new Dominion cabinet is being formed. Secondly, the national government in Canada, apart from the emergencies of war, has never thus far engaged in a range of activities comparable to those carried on by the British governments. A high proportion of the governmental functions carried on in Canada are in the hands of the nine provincial governments. So, while the Dominion cabinet has always to keep in mind the bearing of its actions on provincial governments and politics—considerations from which the British cabinet is free—it has not been compelled, except in war-time, to adjust its procedure to the same congestion of business which piles up before the British cabinet. Attention will be limited here to the principal points of difference.

When a party leader is called on by the Governor-General to form a cabinet he has to attend to the same kind of considerations which guide the British Prime Minister in his selection. Yet these can scarcely be said to be his primary concern. Well-established custom which has almost hardened into a convention of the constitution requires him to distribute cabinet posts so as to give representation to the provinces, and even to minorities and sections within provinces. Representation in the Dominion cabinet is accorded to provinces as regions, to the portion of the electorate which resides in a particular area, and not to provincial governments as such. For example, when a Liberal government is in power in Ottawa, the cabinet minister from Alberta is not in any sense a representative of the Social Credit government in Alberta.

Custom is generally somewhat vague, and in this case it does not prescribe the exact representation to be given. Generally speaking, Quebec has been allotted at least four and this representation is always balanced by four or more

from Ontario. Each of the other provinces demands at least one although it is becoming very difficult for Prince Edward Island to maintain its claim. It is generally understood that three of the ministers from Quebec are to be French-speaking Catholics while one represents the English-speaking minority in Quebec. The considerable French-speaking population outside Quebec is usually represented and the English-speaking Catholics usually find a spokesman, often in one of the ministers chosen from Ontario. In addition, certain sections of the country have established claims to particular portfolios. For example, for many years ministers of agriculture have been drawn from the Prairie Provinces, and ministers of fisheries from the Maritime Provinces.

The exact distribution of cabinet posts along these lines varies from time to time but the sectional, ethnic, and religious diversity of the country is always recognized in the composition of the Dominion cabinet. If one can judge from the practice of the past, this scheme of composition is the first imperative in cabinet-making and any radical departure from it is likely to weaken the prospects of the offending political party with the sections or groups whose expectations have been slighted.

The necessity of giving the cabinet a federal character limits the Prime Minister's choice of colleagues in two ways. On the one hand, it is often hard to find cabinet timber among the members of his party returned to the House of Commons from particular provinces or by particular minorities. Since he scarcely dares to pass them over, the quality of the cabinet is sometimes lowered. On the other hand, by the same token, he may be compelled to pass over able parliamentarians who could almost insist on inclusion in Britain. One result is that the Canadian national parties do not always manage to maintain a corps of recognized party leaders with long experience in Parliament and in office. Cabinet posts so often have to go to men whose previous political career has been undistinguished or limited to one province. Men who are relatively or entirely unknown in national politics commonly turn up in the cabinet particularly after an election which brings a change of government.

It will be explained later that the national political parties in Canada are not close-knit, well-disciplined organizations as they are in Britain. It will suffice here to note that the Dominion cabinet is not so much composed of a body of recognized leaders of a national party as it is of representatives of provinces and of ethnic and religious groups. Consequently, the attitude of the cabinet on the national questions it has to decide is often strongly influenced by sectional and other particularistic considerations.

A minister always has to put the view of the province or other group he represents. For example, when tariff policy is being considered in the cabinet, the minister of agriculture representing one or other of the Prairie Provinces must remind his colleagues of the special prairie attitude on tariffs. In all matters of federal administration affecting a particular province, that province has a friend at court in the person of the minister from that province. Appointments to federal jobs in a province are generally made on the recommendation of the minister from that province.³ The Fathers of Confederation intended the Senate to represent the several provinces in the councils of the Dominion. As things have turned out, the Senate has no great influence and it does not in any marked way represent provincial points of view. But the champions of provincial interests have established themselves in the seats of power in the cabinet.

The relatively modest peace-time functions of the Dominion cabinet have also affected its structure. Except under the stress of war, the number of departments in the Dominion government has rarely risen above fifteen while in Britain the number of departments, major and minor, is never less than twenty-five. Moreover, the peace-time load of departmental work in the Dominion government has never been so great as to compel the appointment of junior assistant ministers while in Britain there are roughly as many of these as there are ministerial heads of departments. So the British ministry is always sixty or more, of whom some twenty of the important ministers form the cabinet.

³Only, of course, in the case of jobs which are not controlled by the Civil Service Commission.

In Canada, with negligible exceptions, all ministers have been members of the cabinet and also heads of departments. In World War I, three parliamentary secretaries were temporarily appointed but no further use of this device for easing the burdens of ministers was made until the appointment of a number of parliamentary assistants, as they are now called, in World War II. The use of ministers without portfolios is decreasing rather than increasing. The demand for ministers who are to contribute wisdom without sharing administrative burdens nowadays rarely exceeds one. He is a member of the Senate and is appointed mainly because of the need to have a spokesman for the cabinet in the Senate. Thus in times of peace, the numbers in the Canadian cabinet have fluctuated between fifteen and twenty.

The relatively lighter burden of departmental duties in Canada has had another important effect. It has made it possible—although by no means wise or useful—for the cabinet to give much closer attention to the details of administration than is possible in Britain. Everyone who contrasts the Canadian and British cabinets is struck by this difference. Much minor detail which in Britain is left to the discretion of the minister must be dealt with by order-in-council in Canada, i.e., a decision of the cabinet is necessary. The most obvious examples are appointments to minor jobs and the awarding of contracts of various kinds. Attention to detail of this kind makes the ministers very busy and lowers the quality of thought they can give to larger issues of policy. But in times of peace their burdens have never been so great as to make it necessary for them to abandon their concern over small details of administration.

Part of this concern arises from the federal character of the cabinet. If the minister from Manitoba is to keep track of and some control over the actions of the federal government in Manitoba, he has to know what other departments as well as his own are doing. Other ministers feel the same need and the most effective device is to require that a large proportion of federal business should be done by order-in-council, thus ensuring that significant matters cannot be settled without their knowledge.

Influences from two different directions, however, are lessening the cabinet's pre-occupation with the minutiae of administration. Civil service reform has removed their influence over and interest in the bulk of appointments and promotions in the civil service. At the same time, the electorate shows a growing interest in the policies of the national government and the sharp political sense of the cabinet responds to that interest. The day is gone when the interest of the constituencies in the national government was limited to jobs, contracts, public works, and similar perquisites. At any rate, since 1940, the approval of a good deal of routine detail has been delegated to a committee of cabinet which meets immediately before the full sessions of the cabinet.

In times of peace, the Canadian cabinet has never been compelled to make any significant use of committees. The Treasury Board, a finance committee of the cabinet, has been the only active permanent committee in peace-time. The First World War and the problems of reconstruction led to the temporary establishment of a war committee and several other committees. This precedent was followed in the Second World War when the vastly greater problem of organizing for total war led to a much more extended use of committees. In fact, the experience of the second war showed in other ways as well that when the Canadian cabinet has to carry a burden of work comparable to that falling on the British cabinet, the devices used by the latter have to be adopted. In 1940, a secretary to the cabinet was appointed with duties similar to those of the comparable official in Britain. In 1943, parliamentary assistants to seven of the ministers with the heaviest departmental duties were appointed. These are members of Parliament who are chosen to assist their ministers, particularly with their parliamentary duties. They are not members of the cabinet nor do they have the rank of minister.

It is impossible to say at present whether these war-time developments will be permanent. It is generally agreed that, even without the burdens of war, they were already overdue. The cabinet had managed to do without them at the price

of lowered efficiency. Perhaps their retention will depend on whether the post-war functions of the Dominion government recede to something close to the 1939 level or whether they remain permanently at a much higher level. The latter seems the more probable outcome.

CHAPTER V

THE LEGISLATURE: ITS FUNCTIONS AND PROCEDURE

IN the tripartite division of powers, the legislature makes the laws. This function includes the imposing of taxes and the appropriating of money to particular items of expenditure. The legislature is in theory the most august authority within the constitution. In Britain, as we have seen, Parliament is supreme over the constitution. By making laws and appropriating public money the legislature sets the tasks of the executive, determines what public services are to be rendered, and within what limits the government is to operate. In democratic theory, the legislature represents the people, or the community, and is supposed to exercise general surveillance over the executive to see that, in its actual administration, government is for the people and not against them. Even in the United States with an independently elected executive, this is expected of it in some degree. This surveillance works through the cabinet system in Great Britain and Canada; in the United States it works through the detailed legislative control of finance and administration, and through special legislative committees of investigation.

The powerful weapon of impeachment is also available in the United States, the constitution authorizing the Senate to remove executive officers from the President down by this method. It is, however, very rarely used and then mainly against judges. It may well become obsolete as it has in Britain where the last case of impeachment of a minister before the House of Lords was in 1805. Although the House of Lords no longer exercises this power, it has other judicial functions which are still alive. The House of Lords tries all peers accused of serious offences and it is the final court of appeal for Great Britain and Northern Ireland. These are historical survivals and need no extended comment. The making of laws and keeping watch over the executive are the significant functions.

THE COMPOSITION OF UPPER CHAMBERS

The British Parliament and the federal legislatures of United States and Canada are all bicameral, composed of upper and lower chambers. The lower or popular chamber is in each case made up of representatives of territorial units, or constituencies, chosen by substantially adult suffrage. The lines of the constituencies are so drawn that each member roughly represents an equal number of individuals. The lower chamber is popular in the sense that it mirrors the nation, the nation being regarded as a number of collections of individuals resident in particular territorial areas. In the United States, the lower chamber, the House of Representatives, is chosen for a fixed period of two years, being regularly renewed at the end of that time by a fresh election. In Britain and Canada, the maximum life of the House of Commons is five years, but it may be cut short at any time by a dissolution leading to a general election.

The House of Lords, the upper chamber in Britain, antedates the period of deliberate devising of political institutions and is a relic of the insistence of the feudal barons that they should advise—and control—the King whose centralizing ambitions always threatened to cut down their local perquisites. By the rule of primogeniture, the eldest son of the feudal lord succeeded to his father's estates and to his place on the Great Council advising the King. Today the hereditary peerage makes up by far the greatest part of the membership of the House of Lords. Of course, it must be remembered that most of the great feudal houses are long since extinct; the Bohuns, Mortimers, Mowbrays, and DeVeres are “in the urns and sepulchres of mortality.” The peers are mostly *parvenus*, having been created by royal letters patent since the seventeenth century.

Indeed, the character of the peerage has almost completely changed since the Reform Act of 1832. Most of the existing peerages have been created since that time, almost half of them since 1900. The new peers of the nineteenth century were mostly men who had succeeded in industry and commerce rather than great landlords. And increasingly now,

peerages are granted for "political and public services." Conspicuous service to the state in the civil service, in the armed services, in diplomacy, or in the professions may be rewarded by elevation. Political services meriting a peerage are of various kinds. Politicians may crown their careers by going to the House of Lords. Men of eminence whose counsel is wanted in the cabinet but who will not fight elections or undertake departmental responsibilities may be made peers to give them the necessary qualification for inclusion in the cabinet. And, of course, it is widely asserted that many are ennobled in return for handsome contributions to party campaign funds.

Ennoblement is not a personal prerogative of the King. The Prime Minister, taking such suggestion and advice as he deems fit, recommends names to His Majesty. The King may object to the inclusion of particular persons or urge a candidate of his own and may on occasion win his point.

✓But, generally speaking, peerages are in the gift of the political party in power.

In addition to the hereditary peers, the House of Lords includes the Princes of royal blood, princes of the church (twenty-six bishops and archbishops of the Church of England), representative Irish and Scottish peers, and seven Lords of Appeal, the latter being eminent lawyers and judges who are given life peerages to carry on the judicial work of the House of Lords.

The Senate of the United States has ninety-six members, two from each state in the Union. The constitution originally provided for their election by the state legislatures. But in 1913, pressure for more direct democratic choice combined with indignation at the manipulation of the state legislatures by would-be Senators forced an amendment to the constitution providing for popular election of the Senators in each state. They are elected for a term of six years, but one-third retire every two years and are replaced by new elections, thus combining a degree of continuity with frequent elections.

✓The Senate of Canada consists of ninety-six members chosen to represent the four great geographical sections of

the country. The Maritimes, Ontario, Quebec, and the Western Provinces are each assigned twenty-four senators. This representation is broken down still further. Each of the four western provinces is assigned six Senators, New Brunswick and Nova Scotia each have ten, and Prince Edward Island has four. Senators are appointed for life by the Governor-General on the advice of the Prime Minister. Membership in the Senate is in the gift of the party in the majority in the House of Commons and the power to appoint is used for party purposes. Considerations similar to those prevailing in Britain determine the choice, though, of course, it is limited by the number of vacancies and the requirement that those chosen must be residents of the areas for which vacancies have occurred. Under these limitations, the exigencies of party leave little room for recognizing distinguished public service, which is not of a specifically political nature.

A minister who has outlived his usefulness in the cabinet can be promoted to the Senate. The pain of being dropped from high office is assuaged if one falls into a soft seat in the Senate. Just before an election, it is common for a number of politicians of the party in power to abandon active practice and go to the Senate. Others who have been active in the service of party although not in the front line as members of Parliament are also remembered. It would be difficult to say how much party management is eased by having a few senatorships to dangle as prizes or consolations but no doubt it is considerable. The use of such appointments for such purposes is not necessarily to be condemned. Politics generally demands heavy material sacrifices from those who make it a life-work and a seat in the Senate is not a generous compensation in many cases. If criticism is to be made, it should be at the frequency of appointment of rich men of powerful business connection for services of an unspecified character. Present indications, however, are that wealth and powerful business connections are of declining importance as qualifications for appointment to the Senate.

The upper chambers of the United States and Canada were deliberate constructions with aim and purpose. Sheer

imitation of the British system and colonial precedents were factors in both cases but two other considerations were decisive. First, in each case, a number of states or provinces of greatly unequal size and population were being federated under a national government. Representation in the lower federal chamber was to be on the basis of population and it was thought that giving the states or provinces equal, or something approaching equal, representation in the upper chamber would safeguard the interests of the less populous in the general councils of the nation.

These anticipations have been largely disappointed. In each case, the Senate has become at least as much representative of economic and social interests of a nation-wide extent as of particular geographic sections. While the smaller states in the United States still cherish the defences offered by the Senate, in Canada, as the last chapter indicates, much more effective means have been found for representing provincial and sectional interests in the federal government.

Secondly, the American and Canadian constitutions were formed, one at the outset, and the other in the early stages, of extension of the franchise toward adult suffrage. It was widely feared that the people and the representatives they chose for the lower chamber would be easily swayed by gusts of emotion and even moved by the baser passions of envy and cupidity. It was thought to be important for stability, for the security of minorities, propertied and otherwise, that an upper chamber representing more conservative elements and not chosen by popular vote should check the vagaries and the envious appetite of the lower chamber. It was for this reason that indirect election and appointment for life respectively were chosen as the methods of recruitment.

In this too, anticipations have been wrong. Lower chambers have not been nearly so passion-ridden as was feared. It is true that for many years before the change to popular election in the United States, the Senate was a bulwark of the great business interests against regulation by government and was popularly derided as "a millionaires' club." But this was due, perhaps, as much to the general domination of all American political life by big business in

that period as to the indirect election of Senators. Since direct popular election was introduced in 1913, the Senate has come increasingly to be moved by the impulses at work within the electorate as a whole.

In Canada, the membership of the Senate has been of a predominantly conservative cast (in a social rather than a political sense) according an exaggerated representation to great business interests, but the political influence of the Senate has steadily declined almost to the vanishing point. Lacking entirely a popular basis in the electorate, it rarely has enough confidence in its convictions to stand firmly against what it regards as radical innovation. More important, the cabinet is responsible to the House of Commons and must bend all its energies to placating and holding the confidence of the lower chamber where the banns are read and all the solemn vows are taken.

The Senate of the United States, on the other hand, has by no means declined into political impotence. The President does not find it necessary every day to cater to the lower house while he is continually compelled to woo the Senate. For the Senate shares with him in the appointing and treaty-making power, thus gaining prestige and influence. Senatorial courtesy, a well-settled usage of the constitution, in effect, assures to Senators of the President's party control over a considerable number of appointments to government jobs in their respective states. This forges for them a powerful connection with the political party machines in the states, enabling them to influence, and even at times to control, party nominations of candidates for the lower chamber.

A six-year term frees them from frequent distraction over re-election from which, by contrast, a member of the House of Representatives with a two-year term is scarcely ever free. The continuity of membership afforded by staggered senatorial elections every two years is a great advantage. The fact that the Senate has less than a quarter of the number of members of the lower chamber contributes greatly to the quality and effectiveness of debate. All these factors, in turn, make the Senate attractive to able men. Members of the House of Representatives aspire to, and frequently

achieve, the Senate, giving it greater resources of mature political experience.

As a result, the Senate is much more than a check on the lower chamber. Although the constitution gives both chambers equal powers in legislation and reserves to the lower chamber the initiation of all revenue bills, the Senate is the dominant partner in legislation. It amends at will legislation coming up from the lower chamber and smothers many bills in committees. When the two chambers disagree on a bill and a compromise has to be arranged through a conference committee, the Senate generally makes the fewest concessions. Thus the widespread doubts about the effectiveness of upper chambers do not apply to the Senate of the United States. In prestige and power, it rivals the British House of Commons.

THE FUNCTIONS OF UPPER CHAMBERS

Generally speaking, however, there are grave doubts about the utility of upper chambers. Once the democratic principle that the will of the majority should prevail was widely accepted, it was inevitable that any forthright challenge of that will by an upper chamber should be regarded as insolent presumption. So when a trial of strength came in Britain over Lloyd George's budget in 1909, the result was the Parliament Act of 1911, an ignominious defeat for the House of Lords. By the Act, its power over money bills which had already been modified by convention was completely removed. A bill certified by the Speaker of the House of Commons to be a money bill no longer needs the Lords' consent before becoming law. They retain a veto on non-money bills but this can be over-ridden by the House of Commons passing the measure three times in three successive sessions in a period of not less than two years. The House of Lords has now only a suspending power. The Canadian Senate which has equal legislative powers with the House of Commons (except perhaps for money bills, a question on which the two Houses and the constitutional authorities disagree) has escaped a like clipping of its wings

by refraining from flying in outright defiance of the House of Commons.

The upper chambers in Britain and Canada are now restricted to very narrow functions. It is sometimes suggested that they can be revivified and made highly useful by making them elective as in the case of the United States Senate. But if they are elected at the same time and on the same franchise as the lower house, they are likely to reflect much the same electoral opinion as the lower house and therefore to be superfluous. If they are elected at different times, or on different franchise, they may represent different popular moods or different general convictions respectively. The result would either be deadlock or, as the experience of the United States suggests, the practical primacy of one house over the other.

The alternative reform, which can be accommodated to an almost infinite variety of ways of appointing the upper chambers, is the one adopted in Britain of deliberately reducing the powers of the upper chamber to a mere suspending power. The voice of the people is the voice of God, but God speaks through fallible parties and politicians. The majority in the lower chamber, either in the first flush of victory, or in the hectic dying hours of a busy session, may well pass measures which, on maturer consideration, they would regret. So an upper chamber can check such legislative impulses without doing violence to the democratic dogma.

Also, the lower chamber in countries with parliamentary government is badly congested because of the enormous grist of legislation, and because it is a forum for criticism of the executive and for party manoeuvres which take up a great deal of time. The upper chamber does not suffer much from these latter distractions. By sheer oversight, bills coming from the lower chamber often lack provisions necessary to their effective administration or contain clauses involving unnecessary difficulties or hardships for particular groups. The upper chamber has time to spend in trimming and polishing the measures which come rough-hewn from the lower chamber.

These suspending and revising functions are the main functions now performed by the House of Lords and the Canadian Senate. Yet even these are subject to criticism. No major legislative proposal, except in war-time, goes through the lower chamber without being preceded by extensive discussion there and in the country. There is, it is often urged, no justification for permitting the House of Lords to postpone the enactment of such a proposal for a further two years.

However, it may be doubted whether any reform is of such immediacy that two years spent in broadening consent to it through the slow erosion of opposition are not well spent. For democracy is as much a matter of gaining the consent of minorities as it is of giving effect to the will of the majority. There is much to be said for the suspending function. The revising function also is important and is reasonably well performed considering the conditions under which it has to be done. Most bills must originate in the lower chamber and few reach the upper chamber till late in the session when they come in with a rush. The upper chamber is idle and overwhelmed by turns so that many bills must either be rejected outright or enacted substantially unchanged. Also, many of the amendments made in the upper chamber are sponsored, or at any rate accepted, by the government. On this ground it is sometimes urged that the revising function could be as well or better performed by a special revision committee of the House of Commons.

Nevertheless, the handicap of an uneven flow of bills into the upper chamber could be largely overcome. And there is much to be said for a second chamber which has time for searching inquiry into the confused and complex facts which give rise to proposals for legislation. As we shall see later, one of the chief defects of legislatures today is that they rarely know enough about the facts to frame the laws most effectively. Neither the House of Lords nor the Senate in Canada has made full use of its time and talents for this purpose. But it is true that the Canadian Senate has made an important contribution to the legislative process through the

investigations made by its committees into economic and social issues.

A very important function of the upper chamber in Britain and Canada is not legislative at all but consists in helping to lubricate the party system. As already noted, it often helps party leaders in forming or reforming a government and in executing other essential party manoeuvres to be able to kick someone upstairs. We do not know how the mechanics of the party system would work without this patronage but some equivalent for it would clearly have to be found. This is not an argument for retaining an upper chamber so much as a warning that few political institutions are purely vestigial, to be removed without some adverse organic effects. The resource of democratic politicians is infinite; they can even find uses for second chambers!

Political parties which are bent on rapid and radical innovation are naturally deeply hostile to upper chambers. The great majority of the members of the House of Lords and the Senate of Canada have found the *status quo* good and will resist its wholesale dissolution. Most of the British peers never attend the sessions of the House of Lords except on occasions of ceremony or to vote against some measure which threatens drastic change. If and when the electorate gives a socialist party a clear mandate for a constitutional revolution, the upper chambers of Britain and Canada will find it hard to survive. The cry will be for extinction rather than reform but a compromise on the basis of popular election for a short term might be worked out. Until that moment comes, the issue is likely to lie uneasily quiet for raising it would raise a storm. It will not be discussed here because other matters of greater immediate and long-run importance must be considered.

THE ROLE OF POLITICAL PARTIES IN THE LEGISLATURE

The really important legislative functions are carried out in Britain and Canada by the House of Commons, and in the United States by the Senate and the House of Representatives, all chosen for short terms by popular vote. But the

most significant facts about this method of choice have yet to be stated. Members of these legislative bodies are not chosen haphazardly by each voter balloting for his preference. The only candidates for election who ordinarily have any chance of election are selected and certified to the electorate by one or other of the well-established political parties.

In Britain, candidates are normally chosen by the local party associations but, as localism is not strong in national politics and the candidate need not be resident in the constituency he hopes to represent, the central party organization influences the choice and sometimes actually provides the candidate. In Canada, there is no residence requirement for candidates but localism is strong and central party organizations generally find it difficult to influence the choice of candidates. The candidates are generally chosen by the delegates to party nominating conventions for the constituency. In the United States, where residence in the constituency is by custom an inflexible requirement, the central national organizations of the parties have no influence in nominations but state party organizations do. Candidates are almost all chosen in party primaries, preliminary elections within each political party to decide who shall be the party candidate. This device was adopted in most of the states between 1900 and 1910 to reduce the influence of the party organizations, as distinct from that of the rank and file of the party, in the choice of candidates.

The influence of parties varies from one country to another owing to constitutional and other differences. So it is impossible to give a general description of the role of parties in the legislature which would be true for all three countries. What follows immediately here states the functions of parties at their highest, approximately as they have been performed in Great Britain. Parties operate similarly in Canada but they do not so completely dominate the legislature as in Britain. In the United States Congress, parties are relatively weak. These differences are highly significant but they must be left for fuller discussion in the succeeding chapter.

In choosing a candidate, the party is careful to pick, among other things, a sound party man, one who is loyal to the leadership and principles of the party. In recommending the candidate to the constituency, the party always justifies him by reference to the statesmanlike leadership and sound platform of the party. The candidate himself modestly subordinates his own claim to merit and preferment to his praise of the party. He dwells on its past record and its present promises, the integrity of its leaders and the wisdom of their policies. He might well repeat the self-depreciation of the hymn, "Nothing in my hand I bring"! It is assumed throughout that the voting is not merely, or even mainly, to choose a person to represent the constituency but to get the verdict of the voters on the party, its leaders and its platform.

These facts are the commonest of common knowledge but their meaning is not always grasped. Much wrath has been poured on the members of legislatures for meekly following their party when significant elements in their constituency objected, and much is made of proposals to make the member individually responsible and recallable by a majority in his constituency. It is forgotten that the member, generally speaking, never held himself out to be individually responsible and was not elected as an individual on his own account but rather as the representative of a party. The party takes the responsibility for the man and the platform, and the constituency is invited to make its reckoning with the party which, of course, it can effectively do by rejecting the party candidate in the next election. The political parties have insinuated themselves between the electorate and the legislature and the bulk of the public show their approval by voting for the party, for the party leader, for the party platform, rather than for the individual candidate.

The party could not invite this responsibility, indeed, would not be taken seriously at all, unless it had the power to make good its promises. Political parties are taken seriously because if one or other of them gets a majority of the seats in the legislature, it is then in a strong position

enabling it to control the legislature and its doings. In Britain and Canada, the majority party delegates this power of controlling the legislature to the cabinet. In the United States, party organization in Congress itself performs this function although, for reasons to be considered later, the discipline imposed is not as firm and all-pervasive. In Britain and Canada, almost all bills introduced in the lower chambers are part of a unified party programme which gets disciplined support. In the United States, the unified party programme covers only a small percentage of the bills considered by Congress. On many bills, therefore, discussion does not follow party lines at all.

In each country, however, the legislature is compelled by the majority party to work to a more or less exacting time-table and to accept an order of priority of business which the party deems essential to the fulfilment of the responsibility it has accepted. Rules of procedure are adopted which limit debate and force decision on particular issues. Moreover, the party disciplines its members in the legislature. If they do not obey the leaders of their party, they may lose their voice in the distribution of party patronage, lose the support of party funds and party workers, and perhaps even the nomination itself, in the next election.

The member, of course, keeps in close touch with his constituents and always furthers their interests where he can consistently with the party line. However, the really vital communication is not between the member and his constituents as individuals. It is between him, the local association of his party, and the central leadership of the party taking the form of a steady flow of information, advice, explanation, expostulation, and petition. If the intelligence thus coming in from all parts of the country indicates that the announced policy of the party should be modified it is not revised through the open desertion of it by members of the party in debate in the legislature. The revision is made unobtrusively in the caucus of the members of the party who are in the legislature, or in secret conclave of the parliamentary leaders of the party, where the sensitive antennae

of the party organization reaching into all parts of the country register the shifts of opinion which urge adjustment.¹

It is in these secret councils of the party that the substance of party policy is hammered out. Here in secrecy, and not in open debate in the legislature, members show what courage and independence they have. Here facts ably marshalled and convictions passionately expressed may change opinion and alter policy. Adjustments of view are arranged and in the end the party line gets almost unanimous support in the legislature from the members of the party. The purpose is to ensure that there will not be an open revolt of a section of the members of the party in the legislature imperilling the power of the party to fulfil the bulk of its engagements to the electorate. In contests for power, a united front is imperative.

What has been said of the party with a majority in the legislature is almost as true of the erstwhile opposition party or parties, although the negative function of opposing does not require quite such steady discipline. Yet the line to be taken by the opposition is settled in party conclave in the same way. Nor is it to be thought that the order and priority of business is always imposed by the majority on the opposition. Much of the agenda of the legislature is settled by mutual consultation and accommodation between the leaders of the parties. It is the party system and not merely the party of the majority which dominates the legislature.

This accounts for many of the features of democratic legislatures which the public finds so disillusioning. Parliament is not the active centre of decision where great speeches sway opinion and make history. When the party leaders speak, they speak to the country as a whole and not to hold wavering followers or to precipitate defections from the opposition. Many members do not speak at all; most of them speak but little, and then mostly to their constituencies. Their vital function is to vote in accordance with decisions already made in the party councils. Here is the explanation

¹In Britain, the central party organizations are so effective in registering shifts of opinion in the constituencies that the party leaders rarely find it necessary to hold a caucus to debate an adjustment on party policy

of the empty seats (except when the party whips descry an approaching division or roll-call), the seeming triviality of debate, the scant attention, the almost discourteous lack of attention, to what is being said.

Parties are arrayed against each other in competition for power, for the sweets of office as well as for the power to carry out the programme promised to the interests which support them. The psychological atmosphere thus generated is one of struggle, and when the parties are fully deployed in the legislature they tend to contest every inch of ground whether or not truth and the public interest are at stake. In these clashes, personal feuds and rivalries tend at times to overshadow issues of principle as the inspiration for debate. Yet many people expect the legislature to behave as if the fact of parties did not exist.

As long as parties continue to perform their present role in government, legislative proceedings will be deeply affected by them. Elected representatives generally will be unable to take an independent line. The only parties which can afford the luxury of wide independence of speech and voting to their members in the legislature are those which have no immediate prospect of governing. The parties mediate between the constituency and its representative, between the electorate and the legislature.

The eighteenth-century three-fold division of governmental powers takes no account of the parties as organs of government because parties of the contemporary type did not then exist. The constitutions of the countries we are considering do not mention them at all. Indeed, except in the United States, there is no legislation regulating their activities. Political parties are far-reaching modifications of these constitutions through usage and convention. Obviously, it will be necessary to give close attention to their organization and functions in later pages. Our immediate concern is with legislatures, and parties have been introduced only because some appreciation of the part they play in the legislature is necessary to understanding.

The overshadowing significance of parties, where it exists, must not be taken to mean that the legislature is no more

than a Punch and Judy show where the puppets move through the unseen manipulations of parties. We should be in bad case indeed if laws were made and announced by a secret junta like a party caucus without possibility of appeal. Many men will acquiesce in private in decisions they would not defend in debate. When they know that they must justify their proposals in what is, despite all detraction, the greatest forum in the country before an opposition which will pounce on the slightest offence to the public sense of decency, a restraining influence of immense weight comes into play. One great service of the opposition lies, not in its spoken criticisms but in the mere fact of being there.

As well, there are always two or more sides to a story and the majority party has not heard all of the other side until the opposition has had its say. Concession to the arguments of the opposition follows oftener than is generally believed. The public, despite its disillusionment, gets from the dramatic clash of parliamentary debate a grasp of the great issues of public policy which it cannot get in any other way until much larger resources are thrown into political education. Finally, the new laws made each year are only a tiny fraction of the old ones which are being administered day by day. Oppressive, wasteful, or neglectful administration will be a black mark against the party which presently controls the executive power if its behaviour can be given wide publicity. Questions in the House of Commons in Britain and Canada and investigations by the United States Congress expose such matters to the public gaze and the executive proceeds warily. Here again, it is not the actual gleanings of legislative surveillance which are of supreme importance but the ever-present threat of investigation.

The discussion of many matters relevant to a well-rounded account of the place of the legislature in modern government must be postponed to later chapters. Here we are primarily concerned with the legislature as a distinct organ of government and the main emphasis will be on internal organization and procedure and on the role of parties in it. The emphasis will be highly selective and partial. The internal workings of each of the legislative bodies under review is a study in

itself and only the briefest sketch designed to bring certain important features into relief can be offered.

LEGISLATIVE COMMITTEES

The growing torrent of legislation which must be enacted to meet the demands of the positive state puts increasing pressure on legislatures. Even though party organization formulates almost all of the new legislation (except in the United States) and guides it to the statute-book, these measures must be explained to the legislature and enacted by it, and time must also be found for debating general policy and examining the trend of administration of the manifold activities of government. It is not only a question of time but also of the sheer size of the legislature. Aside from the United States Senate, the Canadian House of Commons is the smallest active assembly with 245 members. The British House of Commons has over six hundred members. Each of them is too large for effective deliberation. Consequently there is increasing reliance on committees to divide the labour and thus to provide for more effective discussion.

In each of the chambers of the United States Congress, a well-developed system of committees antedates the rush of legislation which has been rising for seventy-five years. This elaborate organization into committees was rendered necessary by the absence there of a general executive committee like the cabinet in Britain and Canada. Many standing committees were formed, each to carry some part of this function of examining proposals for legislation and deciding which of them should be recommended to the chambers. As the mass of legislative work mounted, these committees came to dominate Congress in somewhat the same fashion that the British cabinet dominates the House of Commons. The standing committees are appointed after each congressional election for a period of two years. In each chamber, there is a standing committee for each of the important recurring subjects of legislation. The number of standing committees varies from time to time. At present, there are forty-eight in the House of Representatives and thirty-three in the

Senate. The really important ones number about a dozen in each chamber.

Each party is entitled to membership on each committee proportionate to its strength in the chambers. When the time comes to appoint committees, the members of each party in each chamber meet in party caucus and select a committee on committees. Each committee on committees then nominates members of its party to fill the quota to which the party is entitled on the standing committees of the chamber. These nominations are ratified almost as a matter of course, first by the appropriate party caucuses and then by the appropriate chamber as a whole.

As we shall see later, the standing committees of Congress substantially make the laws. Thus those who effectively choose the standing committees have a great influence on what laws are made. The committees on committees are composed in each case of a small group of party leaders or their nominees. This gives some indication of the extent to which the party system, if not the majority party, can control Congress. In fact, the majority party can control the decisions of the standing committees when it chooses. In addition, chairmanship of each standing committee goes almost automatically to the member of the majority party in the chamber who has had the longest continuous service on the committee. A skilful chairman who has had a long experience on a committee and has accumulated a wide knowledge of the range of matters with which the committee deals can exercise a powerful influence on its deliberations.

All bills and proposals for legislation go automatically to the standing committees before being considered by the House as a whole. Party lines are relaxed and almost ignored in discussion. To aid them in reaching the recommendations they will make to the House, the committees hold hearings, public or private, where civil servants, disinterested experts, and lobbyists representing the interests concerned are heard pro and con on the subject. Enormous numbers of proposals for legislation are quietly smothered in committee. On the average, less than a tithe of those referred to committee ever emerge therefrom. Congress can insist that a bill be re-

ported out of committee but rarely does so. Those which are not killed in committee are often subjected to major operations re-making them in such a way that their sponsors would hardly know them. Of course, the majority party can control the committee and compel it to report to Congress bills which the party is backing, or which the President, provided he is of the same party, urgently wants to go forward.

The vital work of the United States Congress is done in the standing committees. The discussions being private, speeches are to the point and not to the constituencies. Representatives of protesting groups are heard and they often get some portion of the concessions for which they press. The form in which the bill is finally reported out is generally satisfactory to the majority party and Congress rarely makes significant changes in any bill which is positively recommended by the standing committees. In other words, the committees are performing the functions of the British cabinet although there is much less often a party line to which to hew.

In this way, the labour of the legislature is divided and a bigger harvest of legislation is produced. However, it must be said that in so far as the effective decisions are taken by small committees ranging in number from four to forty members, the representative character of deliberation on law-making is greatly impaired. Attempts are made to distribute membership of committees geographically but that does little to repair the damage to the representative principle. Also, the system suffers from the nemesis which pursues all divisions of labour—the difficulty of combining the separate specialized efforts into a harmonious whole. Very effective work is done on specific pieces of legislation but not always with sufficient recognition of their relation to general policy. The British cabinet system by concentrating responsibility for the formulation of all aspects of policy on a single body keeps the necessity for integrating the legislative programme in the foreground and the British House of Commons therefore is marked, as Congress is not, for debates of high quality on the general policy of the government.

In addition to standing committees, select committees are appointed to inquire into special issues of concern as they are thought to require it. Also, the fact that the two chambers are equal in power often brings them to deadlock on some piece of legislation. Since both must accept a proposal before it can become law, some compromise acceptable to both has to be found. The usual device is a conference committee consisting of members of both chambers who search—sometimes long—for a solution.

The British House of Commons, always averse to standing committees on the ground that in practical effect they make inroads on the supremacy of a representative Parliament, managed to avoid any substantial development in this direction until the beginning of the twentieth century. It was able to do so for two reasons. First, the cabinet is largely a committee of the House for framing and guiding legislation. Second, the practice of resolving the whole House into committee for various purposes gave some of the advantages of committee procedure.

Committee of the whole, as it is called, is formed by the Speaker leaving the chair and giving over his duties to a less exalted chairman of committees. Party reins are slackened and the rules of debate are relaxed. For example, members may speak more than once to the point under discussion and the majority cannot summarily saw off debate by moving that the previous question now be put. All financial proposals, and other bills of unusual importance, still go to committee of the whole.

The pressure of work is inexorable and, after some exploratory use of standing committees, they came into general use in 1907. They are now five in number at most. Aside from one which specializes in Scottish affairs, they are general purpose committees, called simply A, B, C, and D, taking whatever assignments are given them by the Speaker on the advice of the committee of selection. To provide for expert assistance and specialist interest, the committee of selection may add members temporarily for the purpose of considering a particular bill.

The committee of selection is nominated by the party leaders and confirmed by the House at the beginning of each session. The committee, in turn, nominates the standing committees, taking counsel with the party whips. The chairmen are not necessarily of the majority party, and while the party whips are not brandished in committee party persuasion is still within call.

Normally, all public bills (including private members' bills but not private bills of which more will be said later) which are not financial bills are referred to the standing committees after second reading in the House of Commons. However, the second reading approves the general principle of the bill narrowing the scope of discussion in committee to details, many of which are of a technical character. Often the decision on these matters of detail will turn on questions of fact or scientific judgment.

The discussion in committee must be restricted to these details. For example, if the bill in question is one to establish a code of safety and sanitary measures in industrial establishments, the committee cannot debate the issue whether the law should interfere with the way in which industrial employers run their factories for that question has already been answered in the affirmative on the second reading. The committee must settle down to deciding what particular sanitary and safety measures are necessary to preserve health and prevent accidents.

So there is not so much room for division on party lines, and there is not much temptation to make speeches to the country at large in a small committee whose proceedings get little publicity. Members even of the majority party supporting the government may press for modifications, and within limits the government will concede them if the argument in committee is cogent or if the debate on second reading has indicated a strong case for some adjustment. But the leaders of the majority party are far from giving the committee its head and they can apply closure to speed it towards its report. Unlike the practice in the United States, the committees do not provide hearings for the private interests concerned. However, while the bill is in committee, the

private interests may press their views strongly on the cabinet.

The British committees lack the power and prestige of their American counterparts. They cannot smother bills and they cannot make major amendments which cut into the principle of the bill, e.g., they cannot eliminate from the factory bill all requirements for sanitary precautions. On the whole, membership in them is not sought but evaded. It is not always easy to find enough willing members to make up all five of the committees. Being general purpose committees, they make no appeal to members with specialized knowledge or interest, and members who go on a committee for the narrow purpose of a single piece of legislation will often ask to be relieved once it has been reported to the House.

The House of Commons is jealous of the committees. Yet it could not do its work without delegating this discussion of detail and its only alternative is to extend still further the growing practice of limiting legislation to a statement of general principle and delegating the power to fill in the details to government departments. The significance of this practice will be taken up later and it will suffice here to say that it too is irksome to the House. So the trend towards greater reliance on committees continues.

It is often urged that specialized committees should be set up to attract the sustained effort of members according to their interest. To each such committee would be assigned the scrutiny of one of the great government departments. It would consider the legislative proposals and the annual estimates of that department and make a close study of its administrative operations. In this way, Parliament would move towards a better understanding and a more effective control of the complexities of government.

The experience of some of the democratic governments of continental Europe (which cannot be considered here) and the dominant position of committees in Congress in the United States clearly indicate that such committees would compete with the cabinet for primacy and it is likely that the party leaders, in order to preserve intact their instrument of unified action, would have to make the practical scope of

such committees much narrower than is suggested. There is also the question already noticed, whether concentration on specialized competence in these committees would not detract from the quality of discussion the House of Commons now provides on general policy.

A word must be said about the treatment of private bills. A private bill is a proposal to make a special law or dispensation for a particular person or group or for a particular locality. Thus, when divorces were granted by Parliament instead of by the courts the procedure was by private bill relieving particular husbands and wives from the requirement of the general law that matrimony is a fight to the finish.

In Britain, most private bills originate in the application by municipalities or public utility companies for additional powers to clear a slum, to construct new tramways, to borrow money for some unusual capital expenditure, or to extend their facilities. Private bills after two readings in the House go to a private bills committee of the House. These committees do give hearings at which all the parties interested in the subject matter are heard with the assistance of very expensive parliamentary counsel. They are small and disinterested committees, rarely being influenced by party considerations. But this procedure is cumbrous and expensive and it is being replaced by another technique for reaching the same result—one which aggrandizes the executive at the expense of Parliament by authorizing the Minister of Health, for example, to decide whether particular municipalities shall have power to clear slums and on what terms.

Frequent use is also made in Britain of select committees of the House to inquire into particular subjects of great importance, or to give special consideration to particular bills which propose drastic change. Their function is inquiry into complex issues rather than the discussion of legislative detail. Accordingly, they are always small committees of fifteen members or less, chosen for their knowledge of or interest in the particular subject-matter. They hold hearings at which interested parties appear and give evidence. When expressly authorized by the House they may compel the attendance of witnesses and require the production of docu-

ments. Detailed records of their proceedings are kept and printed along with their formal reports. In short, their function is similar to that of a royal commission of inquiry although performed in a less pretentious manner.

The committee system in the Canadian House of Commons has responded to both British and American influences but has developed distinctive features of its own. As in Britain, money bills go to committee of the whole, being introduced there in the form of financial resolutions. Select committees are used more extensively than in Britain. Fourteen standing committees are set up in each session, each to deal with one of recurring topics of discussion or legislation. A special committee of the House composed of the leaders of the political parties prepare a list of the members to be assigned to each of the committees and their choice is confirmed by the House. The standing committees, composed of from twelve to sixty members, reflect the relative standing of the different parties in the House and, as in the United States, the chairmen are always of the majority party. It is not uncommon for a minister to be selected as chairman.

When bills are referred to them, the standing committees may call witnesses and hear representations from interested parties—a copying of American practice. Their membership is usually thirty or more and their proceedings are discursive. Despite the fact that the chairman and a majority of the committee belong to the party supporting the cabinet, discussion and voting are markedly non-partisan. Although they have no power to smother bills, they often do not report to the House before the end of a session, thus postponing action. Ministers who wish to hasten the progress of bills through committee cannot insist on a summary closing of discussion and they sometimes find a committee proposing amendments they are extremely reluctant to accept. Standing committees—and select committees as well—exhibit greater independence of partisan control and cabinet suggestion than in Britain. As will be explained later, this difference arises from a difference in the nature of the political parties in the two countries.

Whether for these or other reasons, many standing committees of the Canadian House of Commons are inactive or little used. After second reading in the House, many bills are referred to select committees set up for the purpose, or to committee of the whole. Reference of bills to committee of the whole does not relieve the House of its burdens in any way. However, the Canadian House of Commons has not in the past been nearly as hard pressed as the British House of Commons.

RULES OF PROCEDURE IN THE LEGISLATURE

A glance at the rules of procedure in legislative assemblies should now enable us to sketch the process of law-making in the legislature. Every deliberative body needs rules of procedure to expedite business and also to protect the right of speech and protest from abridgement or abuse. Rules against the abuse of the right of speech are particularly required to maintain the equitable temper of discussion without which deliberation cannot be carried on at all.

In the long course of its development, the British House of Commons built up an impressive body of customary rules of procedure. These remain the basis of its procedure at the present day, but they have been extensively supplemented by deliberately adopted written rules, known as standing orders, covering the order of business, the time to be allotted to various kinds of business, the stages of debate on measures and other matters. By majority vote, the House may suspend or repeal any rule of procedure as it sees fit. Thus the majority party controls the procedure of the House. Standing orders give the cabinet about seven-eighths of the time of the House and a session rarely goes by without the cabinet having to encroach on the limited time left for private members' business.

By the adoption in standing orders of the various forms of closure early in this century the cabinet can use its supporting majority to close discussion at once or at a definite future hour, and to select which of a number of proposed amendments to a bill shall be discussed and which rejected without discussion. Closure is a drastic power but, as a result of the

demand for more and more legislation and government action, the hard choice is between more talk and less completed business, or more business disposed of and less talk. One may sympathize generally with the latter alternative but it must not be forgotten that the real function of Parliament is to talk reluctant people into consent to measures which they dislike. Closure is a necessary instrument under present circumstances but if it is not used sparingly and with wisdom it will strangle a deliberative assembly.

The colonial legislative assemblies of North America followed the British rules of procedure of the time and Congress has been deeply influenced by them. Thomas Jefferson, when Vice-President, drew up for the Senate a famous *Manual of Parliamentary Practice* based on the British model. The House of Representatives adopted this manual in 1837. It is still the core of congressional procedure although surrounded by many modifications and additions. Both the House of Representatives and the Senate have power to change their rules by majority vote. Committees on rules, dominated by the majority party, propose changes which the chambers accept. The House of Representatives has rules corresponding to the British closure provisions and they are used not only to limit but at times to strangle debate.

For long, the Senate made no provision in its rules for restricting freedom of debate but allowed minorities to continue talking indefinitely in protest against majority measures. On occasion, Senators have turned in prodigious performances speaking many hours at a stretch, supplementing ideas and arguments with the poets and, working in relays, keeping the house in continuous session around the clock. These filibusters, as they are called, sometimes wear out the majority and defeat the legislation but they have not been so common in recent years. The reasons, in part, are that in 1917 the Senate adopted a rule for enforcing a mild form of closure, and that in 1933 the short session of Congress with a fixed date for its termination was abolished. As none of the sessions now end on a fixed date, it is harder for Senators to talk until the sands run out. Closure has been used in the Senate on occasion to limit debate on foreign affairs

but not on legislation on domestic matters. Also, the relatively small membership of the Senate reduces the necessity for restrictive measures.

In Britain, the cabinet containing the leaders of the majority party takes the leadership in expediting business within the framework of the rules. It has a programme prepared at the opening of every session. It takes up most of the time of the House and sees to it that the important items on its programme are dealt with and brought to some conclusion. In the United States, the executive does not lead in Congress, and its place is taken by the floor leaders and steering committees of the majority party.

In fact, in each chamber, each party has a small steering committee. Naturally the steering committee of the majority party is the significant one as the pushing of party measures, the allotting of time, and changes in the order of business generally originate there. The chairman of the committee is floor leader for his party, and is aided by the whips who herd the members of their party into the chamber for roll-calls. If some members of the party are wavering on an issue which seems to call for party solidarity, the caucus meets and tries to work to a position that all will be willing to support.

It is evident then that the majority party everywhere has procedure within its control and can enforce its will by drastic methods. However, drastic action is not often openly resorted to although the threat of it is always there. Both parties know that they are participants in a system of deliberation which will not work without give and take. The minority expects soon to be a majority when it will want the decks cleared for action on its programme. The majority will generally make some concession to a determined opposition pressing arguments which seem likely to appeal to a wide section of the public as sensible and just. So changes in the order of business and limitations on the time of debate are often by arrangement between the leaders of the parties. It is only when some alarming new issue arouses deep conflicting passions in the electorate or when an impatient new party appears in the legislature that obstruction and disorder,

and the consequent bludgeoning by the majority, make their appearance.

FORMAL STEPS IN LAW-MAKING

The process of law-making will now be outlined. In Britain, government bills, almost the entire grist of public bills, are drafted by the executive. The department whose special concern a bill is consults with the other departments affected, civil servants contribute their experience and work out specifications of the technical means required to reach the desired end. When a completed draft of what is wanted has been approved by the cabinet, it goes to the parliamentary counsel to the Treasury, a drafting expert who fits the bill with legal clothing or, more precisely, drafts a bill which will accomplish legally the desired results.

First reading in the House of Commons follows. It is generally reading by title only and never more than notice of motion to bring the bill forward for discussion at a later date. On second reading, the principle of the bill, the general question whether such legislation as this is necessary or desirable, is discussed. While it is not unknown for the government to withdraw a bill after an onslaught on it at second reading, it is extremely rare. After all, the government claims a mandate from the people to pursue its policy and its bills are the central part of that policy. The bill is passed on second reading and is referred to a standing committee.

As already explained, the committee considers the bill in detail clause by clause, making amendments at its own, but mainly at the government's, behest. When this overhauling is completed, the bill is reported back to the House. At report stage, as it is called, the House considers the bill in detail. But if the time saved in committee is not to be wasted at the report stage, this consideration must be limited and fewer amendments are moved at report stage than in committee. As soon as report stage is finished, the third reading may be moved. At this final stage, only verbal amendments may be introduced, so that the debate on the third reading tends to rehearse the debate on the second

reading. Despite the reservations of the House about standing committees, the really thorough consideration of the bill in detail is given in committee. After passage by the House of Commons, the bill goes to the House of Lords. It may be added that private members draft their own bills but this is of little import as such bills have almost no chance of becoming law.

In the United States, bills considered desirable by the President may be drafted in the government departments and introduced into one or other chamber of the legislature by a member of Congress who is of the President's political party. A high proportion of the important measures put before Congress are now initiated by the President. Congress, however, considers many measures which are not inspired or even favoured by the executive. Any member may introduce a bill and the committees often have proposals before them which they wish to put in the form of a bill looking toward legislation. For long, Congress had to find its resources of draftsmanship where it could, but some years ago provision was made for the appointment of legislative counsel as officers of Congress to draft bills for the committees and members of Congress. In addition, special interests wanting legislation on their behalf often draft their own bills and have them presented to Congress. This extensive private enterprise by individual members of Congress and outside groups in introducing bills explains why such heavy slaughter of bills occurs in committees.

All bills introduced are given first reading by title only and are immediately referred to the appropriate committee. In the Senate, first and second readings, both quite perfunctory, are commonly given at the same time before the bill goes to committee. The real deliberative effort, it will be recalled, takes place in committee. The House of Representatives when a bill is reported to it favourably by committee generally contents itself with acceptance, rejection, or minor amendment on second reading with little debate. If serious debate and amendment are desired and are acceptable to the steering committee of the majority, the House resolves itself into committee of the whole for the purpose. Third

reading immediately precedes final passage and occurs without debate.

In the more individualistic Senate with fewer members and less restrictive rules of procedure, bills favourably reported by committee are likely to get closer examination and more discussion. Amendments are freely offered and debated; whether they have a chance of acceptance depends on whether the measure is one respecting which party lines are drawn. Third reading immediately precedes the final vote on the bill.

Procedure in the Canadian House of Commons is modelled on the procedure of the British House of Commons. There are, however, significant variations in the rules, and also in the way in which the same rule is applied. Broadly speaking, the majority party does not keep as tight a rein on the House as in Britain. Debate is more prolix and loquacious. A mild form of closure was introduced in 1913 but it has rarely been used. The cabinet does not insist on the House working to a time-table. As a result, the Canadian House of Commons in World War II has found itself unable to give anything like adequate attention to the conduct of the war. Even in times of peace, the end of a session almost always finds the House rushing through important business without giving it the careful consideration it deserves.

It is widely held that the cabinet in consultation with the leaders of the parties in the House of Commons should take the responsibility of rationing debate. It has not done so because the peace-time responsibilities of the Dominion government have not been great enough to compel it. The House has always managed to get through the work of a session somehow. The political parties have never had thus far such extensive party programmes to be implemented as have the parties in Britain. Moreover, as we shall see, party discipline is not nearly as strong in Canada as in Britain and it may be doubted whether the Canadian cabinet could enforce a rigid time-table in times of peace.

In a constitutional regime, all taxation must be approved by legislation and no expenditure of public money can be made without authorization of the legislature. Taxing and

appropriation measures are legislation of vital importance subject to some special rules. As the course of financial legislation brings out most clearly the working relationship of the executive and the legislature, discussion of it will be postponed to a chapter devoted to those relationships. For the same reason, discussion of legislative surveillance of administration might be postponed as some attention will have to be given to it there in any case. On the other hand, a description here of the mechanisms used and the time available for inquiring into administration will help to round out discussion of the legislature and to clear the ground for undivided attention to the essence of legislative-executive relationships.

CONTROL OF ADMINISTRATION BY THE LEGISLATURE

In Britain and Canada, the executive is in the legislature and responsible to it. A vote of censure of its administrative performance may cause the downfall of the cabinet just as well as rejection of a government bill. It was the imminence of a vote of censure on the administration of the Department of Customs which led Mr. King to make the famous request for a dissolution of Parliament in 1926. In practice, a motion of censure is rarely successful because the government can generally rely on its majority to preserve it from such disasters and its demands on the time of the House do not leave much time for the debating of administration. Despite the enormous range of the present-day activities of government, the time available for discussing administration in the normal, annual session of Parliament is estimated at less than thirty days in Britain and not much longer in Canada.

A more effective means of criticizing the administration is the right to ask questions of the executive. In Britain, an hour is set aside each day for questions addressed by a member to a minister. The rules of the Canadian House of Commons do not provide for a daily question hour but a substantial amount of time is made available for questions. In Canada, the questions almost invariably seek information, often in great detail which can be adequately given—and sometimes can only be given—in writing. Apparently the view is that

if only enough data are elicited they will reveal something about the distribution of jobs or awarding of contracts which will be embarrassing to the government.

In Britain, the questioner may be seeking sheer information but more often he picks on some incident of administration, perhaps the grievance of one of his constituents against a minor government official, or on some unwise remark of a member of the government in the House or elsewhere, in the hope of forcing the minister into a damaging statement about the policy of the department he is administering. He wants an oral reply and he needs the right to ask supplementary questions of a minister who makes an evasive reply. The question hour is a battle of wits, the minister trying to score off the hecklers and they trying to skewer the minister with a question which cannot be answered without putting him and his department in a bad light. It is an important technique of opposition. Ministers always fear that if there is a chink in their armour, questions on successive days will probe for it until it is found. Civil servants (whom the minister protects loyally in the House but whom he excoriates afterwards for their mistakes) are extremely wary in what they do. Where thousands of civil servants are daily dealing with hundreds of thousands of citizens, it is important to have a forum where grievances against their conduct can be aired and misdeeds corrected.

The House of Commons would be swamped with questions if each member were not strictly limited in the number to which he can demand oral answers. Only a fraction of the opportunities for grilling the executive for its administrative actions can be followed up. And, of course, many of the best opportunities are missed even in Britain because most members of Parliament are not at all conversant with the details of administration. For that matter, the minister himself does not know too much about them but he is coached by civil servants who know vastly more about these details than anyone else. The actual contest is on unequal terms. The real control is the knowledge that gross maladministration will certainly be exposed on the floor of the House and thus broadcast to the public.

Members of Congress in the United States cannot question the executive on the floor of the legislative chambers but they do debate administrative action and vote critical resolutions making specific recommendations. They go further at times and enact detailed laws directing the minutiae of administration. Most important, they appoint from time to time committees of investigation to explore the conduct of some branch of the executive. These committees ask, and often get, from the executive access to books, papers, and documents, although they cannot compel the President to give it to them. They require government officials as well as private citizens to appear and testify before them.

Newspapers give almost hysterical publicity to these investigations with the unfortunate result that they often become witch-hunts or sensational trials of particular individuals rather than sober investigations into public administration. They are sporadic rather than continuous and often they are not launched until after the horse has been stolen. Nevertheless, Senate investigations particularly are educators of public opinion and the executive has a well-founded fear of the probings of the Senate. They are perhaps as effective as the separation of powers permits them to be. At any rate, they confirm the anticipation of the framers of the constitution in that they fan the latent hostility between the legislature and the executive.

WHAT IS WRONG WITH THE LEGISLATURE?

Present-day democratic legislatures are ridiculously over-worked. Despite the increasing length of sessions, the legislatures cannot give careful consideration to many of the laws they enact, and they can find only a limited time in each session to examine the vast administrative machine of the government. Moreover, they could not accomplish what they do if they were not guided and controlled by a relatively small group of men, the leaders of the political parties. Important decisions have to be delegated to committees which are not really representative, and debate has to be curtailed. It is scarcely true nowadays to say, in more than a formal sense, that legislatures make the law.

Yet legislatures are vitally necessary as censors of the parties and of administration. There is great need to improve the quality of their work. No doubt their procedure which is still redolent of more leisurely bygone days could, and must, be improved. But if the demands of the positive state are to continue to mount, it cannot be emphasized too strongly that the greatest need is to improve the legislators' knowledge of the complexities with which they are asked to deal. The average member does not stand very far above the general standard of the good citizen, often called the man in the street. This is the kind of censor of government that a democracy wants, not a talking encyclopedia so devoted to the accumulation of information that he loses the common touch. Unfortunately, it would require a superman without any other distractions to understand what is involved in the present-day range of legislation and administration. And if the legislature does not understand what the government is doing, constitutionalism can only have a precarious existence.

It is often complained that the quality of legislators has declined, that today none can compare with the gigantic figures of the statesmen of the past. Close observers who have tried to measure the stature of the legislators of earlier days are almost unanimous in denying the decline. If the quality of deliberation and legislative action has dropped, the clue is to be found, not in the quality of the legislators but in the extraordinary expectations of what it should be possible to accomplish by legislation. When the accomplishments fall short of the expectations, as they often do, the tendency is to blame the legislators. Rarely is sufficient allowance made for the inherent difficulty of what they are expected to do.

CHAPTER VI

POLITICAL PARTIES

THE way in which political parties have inserted themselves between the electorate and the legislature has been pointed out. Some indication of their influence over legislative proceedings and decisions has been given. Even if there were no other evidence of their central importance, we already have enough to show that a study of liberal democratic government which ignores them would be quite unreal. There is, however, other evidence. The growing democratization of government in the nineteenth century was everywhere accompanied by the rapid development and intensive organization of nation-wide political parties. Wherever democratic government has flourished, two or more political parties have been active participants in government. Invariably, the first step of dictators in destroying democratic government has been to forbid all political parties but one. There is ample reason for suspecting that political parties are somehow essential to the working of democratic government.

It is, however, far too important a matter to be left in the realm of reasonable conjecture, particularly because many people of genuinely democratic instinct are deeply hostile to the party system and are convinced that most of the troubles of democratic countries are due to the spirit of faction which competing parties foster and promote. An attempt must be made to lay bare the connection between liberal democratic government and political parties. This requires some fairly abstract analysis based on certain assumptions about human nature and the prevailing condition of the electorate. It does not require at this stage any further description of the organization and general behaviour of political parties. Such description will be much more meaningful once the essential functions of parties are made clear.

The analysis will assume the existence of two parties only, partly for the sake of simplicity and partly because the most effective democratic governments have, until very recently, had two-party systems. The multiplicity of parties had a weakening effect on the democracies of continental Europe and it is not at all clear that democratic government will work permanently where there are numerous parties of roughly equal strength. The reasons for this doubt will emerge later.

THE FUNCTIONS OF PARTIES IN A DEMOCRACY

The fundamental fact is adult suffrage. Almost every sane adult has a vote to add to the total from which the will of the people for some common action or programme has to emerge. Unfortunately, the people are far from finding spontaneous agreement, or even spontaneous majorities, on what ought to be done. The important basic assumption made here about human nature is that most of us are cranks. If ten men are asked what should be done to save the country, there will be several opinions: soften the banks, abolish trade unions, forbid the sale of goods on credit, teach religion in the schools. Even when patterns of partial agreement are found, such as the socializing of the means of production and distribution, a little further inquiry reveals a multitude of counsel about the pace of advance towards, and the means for reaching, the desired end. Socialists, practising utter self-abnegation, have yet quarrelled bitterly for two generations and broken into a dozen camps over the question of means. The electorate, even after years of education by political parties, is still a mass of various opinions looking for salvation in different directions.

Left to themselves, how would the voters in a constituency pick a representative to the legislature and instruct him on what should be done there to further the common interest? At worst each voter would vote for himself and his own panacea. At best there would be numerous candidates, and one of them supported by a small faction which had agreed momentarily to back him would get more votes than any other candidate. Only in the rarest circumstances would any

candidate get a majority of all votes or any majority opinion emerge as to what should be done to further the public interest. The members of the legislature thus chosen by haphazard and temporary combinations in each constituency across the country would themselves be cranks of various opinions and their accomplishments in the legislature less constructive and more disillusioning than at present.

The two-party system does to this incoherent electorate what the magnet does to the iron filings—it organizes the voters around two poles, orients them in relation to specific alternative programmes of political action. It selects programmes more or less clearly outlined, it chooses candidates, and given a majority in the legislature one or other party proceeds with its programme. Without the parties, there would be no stable majority in a legislature and without the support of an enduring majority it would be impossible to maintain steady drive behind a programme for even a month, let alone three or four years. When government performs so many important functions, such a situation would be serious indeed.

How do the parties do it? Each sets itself primarily to the task of constructing a majority. Party politicians are not, and cannot be, crusaders, men of single-minded passionate purpose, who drive straight to the realization of their ideals. They are not even generally the inventors of the ideas they expound. In the aptest phrase yet applied to them, they are brokers of ideas. They are middlemen who select from all the ideas pressing for recognition as public policy those they think can be shaped to have the widest appeal and, through their party organization, they try to sell a carefully sifted and edited selection of these ideas (their programme) to enough members of the electorate to produce a majority in the legislature.

It puts the activities of the politician at their lowest to say that he seeks to gain power and a livelihood through traffic in the beliefs and ideas of others. It is well to see things at their starest. In fact, most politicians have their own conception of the public good which they would

like to see carried out. That is impossible without power and power has been dispersed among a numerous electorate.

It can only be concentrated in a democratic way by massing votes behind leaders and a programme. The party politician, unlike some others, has learned about the facts of life; he knows, as another happy phrase has put it, that votes are not delivered by the stork. Voters have to be attracted and organized. Only when this has been done by nation-wide effort and co-operation of many politicians can any one of them hope to make some of his ideals come true. And then he can never hope to realize more than a fraction of them politically. For to get the co-operation of other politicians whose ideals differ from his, each has to give hostages. Each has to give up some portion of the good he sees, to make room for some of the good that others see.

When the politicians united in a party come to appeal for the votes of a vast electorate, the programme has to set aside much that the politicians personally think desirable in order to accommodate something of the diverse goods held dear by the members of the electorate. In so far as the initial assumption of a radical diversity of opinion in the electorate stands, it is clear that the wider the appeal, the lower will be the highest common factor on which united action can take place.

It should not be necessary to labour this point in Canada where it is only rarely that a political party can win power without getting substantial support in Quebec. But Quebec opinion on what the Dominion Parliament should be instructed to do for the common good shows marked divergences from the lines of policy for which majorities can be found in the rest of Canada. Accordingly, political parties must modify their programmes to find a compromise which will produce a nation-wide majority. This compromise will be something which neither Quebec nor the rest of the country would plump for if each were going its own way.

It is not the fact of Quebec alone that makes this process necessary, although the French-English diversity provides its most striking illustration. The process is at work in every constituency and in every province across the country.

The use of this technique of accommodation is, in varying degree, a skill required of democratic politicians everywhere. Britain, with greater social homogeneity than Canada or the United States, gets on with less watering down of programmes of political action but is far from avoiding it entirely.

Party politicians, therefore, are brokers in another sense. They are always arranging deals between different sections of opinion, finding compromises which "split the difference," and thus concentrating votes behind the programme of their political party. As long as the sovereign electorate is of numerous diverse opinions, this is the only way that majorities can be constructed and power gained to push through any political programme in a democracy.

It may be objected that the argument proves too much. If opinion were naturally so diverse, the parties could never herd the bulk of the electorate into one or other of two camps. In fact, this is precisely what the democratic politicians of continental Europe were always unable to do and parties always tended to become more instead of less numerous. In Britain and the United States a two-party system was established while the electorate was still small in numbers and politics was, much more than now, a game between the ins and the outs (where there are naturally only two sides). Large sections of the electorate became habituated to allegiance to one or other of the two parties and deeply attached to its leaders and traditions.

Once the two-party system was firmly established, a number of factors discouraged the setting up of additional parties. Everyone has had cause to remark the plausibility of the politicians. Their programmes are devised with generally recognized problems in mind. Their arguments seem convincing to an electorate which knows little about the nature of those problems and has given little attention to the ways of meeting them. Most people find that after earning their daily bread and keeping track of the adventures of their favourite motion picture actresses, they have little time for the serious study of politics. Their interest and conviction is not strong enough to make them launch new

parties unless there is a pronounced failure of the established parties to meet obvious and urgent problems.

The voter who has not time to study politics has not time to start an organization to promote his views. If his vote is to count at all, he must attach himself to one of the vote-gathering organizations already in the field with some prospect of winning. He is the more disposed to do this, because everyone likes to put his money on the winning team. Third parties are launched from time to time but unless they rapidly come within striking distance of a majority, their support soon falls away. Other factors which have supported the two-party system in the past will be considered in other connections.

The first essential function of the party system then is to organize voters into majorities behind platforms and leaders. The voters get alternatives from which to choose and the electorate can reward the party which appears to be deserving and be sure that both parties will strive to merit reward. This is the only way in which a numerous electorate can exercise effectively the power which democratic theory assigns to it. Also, as earlier discussion shows, the parties by their activity in the legislature contribute to the political education of the electorate. They turn talk into legislation, and legislation into concrete regulation and services through administration.

By concentrating votes for themselves, the political parties concentrate responsibility on themselves. It would be difficult to exaggerate the importance of this. The majority party has power to implement its promises, to meet problems as they arise, and to administer laws wisely and fairly. In so far as it is judged in the sequel to have failed, there is no doubt who is responsible and who is to be punished. The people can bring home responsibility to a determinate group of men.

If there were no parties and a crisis arose which was not appropriately met, everybody would be equally responsible, i.e., nobody would be responsible. If there were only one party, the responsibility would be clear but it could not be brought home because there would be no alternative govern-

ment. And the chief defect of the multiple-party system is that in the shifting coalitions which it involves, responsibility is blurred and the electorate can scarcely determine where it lies. The two-party system does not enable the sovereign electorate to govern the country. It does enable it to choose and rule its masters and to make government responsible. Those who know the history of government among men will not be disposed to belittle this achievement.

THE INDICTMENT AGAINST PARTIES

Yet the every-day spectacle of party politics rouses widespread disgust and distaste. To many, politicians are the lowest form of life and all appreciate Artemus Ward's recommendation of himself, saying "I am not a politician and all my other habits are good." In part, this disgust is due to a failure to understand why the democratic politician does not summarily enforce the ideals of the critic and have done with it. In great measure however, it is a reaction to certain unsavoury aspects of political life. The indictment against parties must be heard and a verdict considered and given.

The unsavoury features arise mainly from the fact of widespread suffrage, although it must not be inferred from this that politics had a better smell when the franchise was limited to the well-born. It had a different odour but by no means a better one. In politics, men are always trying to get their hands on the instruments of legalized coercion and on the sweets of office. It is therefore the most ill-clad struggle for power short of open war and is likely to be unmannerly and sometimes unscrupulous. Politics is also the arena where passionately held ideals clash and men are tempted to make the end justify the means. It is rash to think that the political process can ever be turned wholly to sweetness and light.

When the franchise was narrow and gentlemen were born to politics, there was little evidence of the existence of parties outside the legislature. In Parliament itself, the members of the parties made their deals in secret caucus and the only outward evidence of these were the principles the members

expounded. It was in these circumstances that Edmund Burke framed his famous definition of a political party as "a body of men united for promoting the national interest on some particular principle on which they are all agreed." Of course, the parties tried to extend their membership and influence to the constituencies in the hope of altering or maintaining the complexion of Parliament at the next election. But the candidate often knew all the voters personally, and in any event could canvass them all himself. Elaborate party organization was unnecessary under these circumstances.

All this has been changed by universal suffrage. Where the voters in a constituency numbered dozens or hundreds, they now number thousands and tens of thousands. The candidates cannot personally canvass more than a few of them. Yet their votes are necessary for victory. The party must come to the aid of its candidate with money and scores of tireless workers. For there is much to be done as an election approaches. The voters must be harangued and canvassed. Wavering voters must have the issues at stake specially explained to them. Campaign literature must be prepared and widely distributed. Space in the newspapers and time on the radio must be arranged and paid for. Transportation must be provided to carry the eager voters to the polls.

An organization which does all this efficiently cannot be thrown together on the eve of an election. It becomes necessary to maintain permanent party committees in each constituency. Nor is this enough. The parties carry on nation-wide campaigns on a national platform and the greatest possible number of seats must be won. A central organization for overall direction is necessary for maximum results. Local party organizations are sometimes slack and need coaching and encouragement. Doubtful constituencies are the sectors where the front breaks and the central organization must mobilize strategic reserves. Research is undertaken in problems of public policy and party speakers across the country are provided with a variety of facts, arguments, and statistics.

The most important work of the central organization, however, is not in fighting this election but in planning the next one. Therefore, it should be a permanent organization with a substantial permanent staff. The platform of the party must have the widest possible appeal and it must not be settled on until the contours of opinion in the constituencies have been plotted. The central organization collects much of the data which the leaders must take into account in drafting the programme. It gives attention to alternative plans of campaign and to the strategy and tactics appropriate to each. It keeps in touch with constituency organizations bolstering their morale, explaining the government's policy if the party happens to be in power, the government's lack of policy if the party is in opposition. Analogies are always misleading but it comes close to being the directing brain of the party.

In different countries, the vigour of the central party organizations varies. They are strongest in Britain, attending to all the matters described and others as well. In the United States and Canada, the national central party organizations are but pale reflections of the picture drawn here. That is because the strongest and most effective party organizations are state or provincial in scope. In many of the provinces and states, central party organizations perform more or less effectively most of the functions described above.

In any case, permanent central and constituency organizations are necessities if the parties are to make the most of the possibilities. The maintaining of these organizations and the fighting of periodic elections are a heavy expense to the parties. One of the heaviest items of expense in an election is the provision of thousands of workers to help garner in the vote, and for this reason parties have found it necessary to rely heavily on unpaid volunteer workers who help for the sake of the party. Money is the root of much evil in political parties as elsewhere. The parties find it too cramping, if not impossible, to finance their operations through the small contributions of a large number of party supporters and much easier to get large contributions from a relatively few people.

This philanthropy is not always pure and there are lively expectations, if not tacit understandings, of favours to come when the party gets into power. Also, it is found that volunteer workers are more numerous and zealous if the party can give concrete recognition of their services. The loyal workers who do the party drudgery are often aspirants for favours which will be in the gift of the party when it is victorious. The party cannot be successful without a vigorous organization and organization depends on benefactors and loyal workers.

Party organization has other disillusioning features. All organization has a tendency to fall under the control of a few. The organization tends to become autonomous, to exist for its own sake and for the satisfactions it provides for its active personnel even at the expense of its principles and original purpose. Most of the supporters of the party have little interest in humdrum matters of organization and their attention to party affairs subsides between elections. Party organization in the constituency falls into the hands of an interested few who try to control it. The national party leaders naturally have a commanding influence in the national organization.

These local and central leaders, along with the permanently employed officials of the party, come to regard the organization as important for its own sake. Since the organization flourishes on victory and languishes in defeat, principles tend to become subordinated to success at the polls. The benefactors and the party workers often make a similar judgment. The former often show how much they care about the principles of the party by making equal contributions to both parties. The party workers and those benefactors who bet their horse on the nose cannot be rewarded without victory. Furthermore, the sheer delight of battle stirs everyone connected with the parties to put victory first. There have been times, in North America at any rate, when these influences made the party system primarily a struggle between the ins and the outs. The only safeguard against this degeneration at any time is some minimum of intelligence and interest in the electorate.

There is clear support of this estimate in the search of the parties for issues which will capture the vote. Since neither party can escape the necessity of encouraging one section of opinion to expect some things which, if stressed too much, will repel other sections of opinion, each party looks for red herrings to draw across the trail, specious issues which divert the public and force the other party to a more favourable battleground. Such manoeuvres can only be prevented by a public which knows too much to let itself be deceived.

Two of the counts in the indictment against the party system used to be fraud in the buying of votes and the stuffing of ballot boxes. Election laws have been tightened up and party managers have lost a good deal of their interest in such piecemeal methods. Improvements in the art and media of propaganda make it easier to attempt wholesale stampedes of voters, and bribery now tends to take the form of promising large sections of the population benefits from the public treasury.

After the election has been won by such methods, those who have deserved well of the party are rewarded. The benefactors who have earned a reward are given profitable government contracts, tariff increases, and other advantages. Some of the party workers get government jobs, often through the dismissal of employees of the government who were just learning how to do their work reasonably well. The patronage or spoils system has many unfortunate effects which are too well known to need discussion. It must be acknowledged, however, that the worst excesses of the spoils system have latterly been curbed by reasonably effective reforms.

Thus it is claimed that the parties are run by small cliques of politicians who take pains to exclude men of better will than themselves from influence in party councils or in framing the party platform. They deceive the public and frustrate the will of the people for better government. They saddle the public with incompetent servants and use their control of the government to enrich themselves, their friends, and supporters.

THE VERDICT ON PARTIES

If a verdict has to be given on the charges summed up in the last paragraph, it will be neither "guilty" nor "not guilty," but "greatly exaggerated." A careful reading of the paragraphs preceding the last one will show that they by no means bear out the charges in full. Occasional politicians enrich themselves at the public expense but most of them live and die poor. Corrupt bargains with benefactors are fewer than is generally supposed. Many men give large sums to their party without expectation of a concrete return, although it would not be correct to say that party policy has been uninfluenced by contributions to party funds. Loyal workers are rewarded with jobs wherever possible but the critics of this practice have never explained where to find alternative sources of energy for running the party organizations.

The hard fact is that the parties need funds and workers for their indispensable function of organizing the electorate. Job-seekers are the bane of the politicians' existence and there is nothing more welcome than utterly voluntary service to the party. It is equally certain that they would prefer to get party funds which entailed no obligation. These have not come forward in sufficient volume from the rank and file of the supporters of the parties, and they have received but little supplement from those who rebuke the politicians for making what shift they can.

It cannot be emphasized too much that the party organizations in a democracy are flexible and necessarily responsive to currents of opinion. Those who are sure that party practices outrage common decency can dedicate themselves to reform of those practices. The obstacles they face are nothing compared to those which vital social movements have overcome in the past.

It is true that a small group of leaders tries to control the party but that is a general feature of all human organization not limited to political parties. Men of good will are not excluded from party councils, but they often exclude themselves because they are too inflexible to make the compromises

essential to the gathering of votes. The parties do not frustrate the will of the people because it is only rarely that even a transient majority of the people is genuinely of one mind about a specific political problem. The parties deceive the public but so do propagandists of every kind. The deception does not often arise from cynicism but rather from zest for the game itself, a general human trait. It may be said generally in conclusion that the evils in the party system are not peculiar to it but are the outcome of general human frailties. Indeed, it is hard to see how the parties which must woo the electorate with success can do other than reflect its virtues and its vices. Perhaps it is people as much as institutions that need to be reformed.

These charges and the verdict on them have been general and they make no allowance for differences in the party system in different countries. Nor do they take account of differences between the parties in the same country. In the last seventy years, at any rate, the spoils system and unsavoury bargains with party benefactors have been much more common in North America than in Britain. Moreover, many of the charges levelled at the party system are much less applicable to the newer third and fourth parties—the parties of protest.

These parties are maintained by a generous idealism which finances the party and supplies the workers for the sake of the cause. This is a tremendous gain and the supporters of these parties, socialist and otherwise, assure us that it is because they appeal to the best rather than to the worst in people. This is not the whole reason. As long as these third parties are a long way from power, it is easy for them to be pure. No one tempts them with donations in return for favours and concessions at public expense. The party workers work hard because until they approach the threshold of power it is possible for each to believe that the party will bring his ideals to fruition. It is only when you have to try to please everyone in order to catch and retain their votes that the sickening compromises begin and the disillusionment which saps enthusiasm among the supporters of the older parties sets in.

PARTIES AND PEACEFUL CHANGE OF GOVERNMENT

As long as we adhere to the rule that ultimate power rests with a diffused electorate, political parties are necessary to frame issues and bring public opinion to a focus. However, political parties, two or more in number, perform other even more fundamental functions for democracy. They make peaceful change of government possible and thus eliminate the necessity for the armed *coup d'état* as a means of changing government, and the counter-necessity of ruling by force and terror to prevent such a *coup d'état*. A glance at the recent experience of the one-party dictatorships will help to make this point clear.

In 1934, the Nazi party in Germany purged itself of scores of prominent members of the party by shooting them down under the pretence that they were resisting arrest. Between 1936 and 1938, there were repeated purges in the Communist party in Russia. Several dozens of the old distinguished members of the party who suffered imprisonment and exile for the sake of the revolution under the Czarist regime were tried for treason and either executed or imprisoned. In each case, these actions were the result of a serious split in the party.

The Nazi party had in it many genuine socialists who wanted to make the party the instrument of out-and-out socialism. In order to win power, however, Hitler had made infamous bargains with anti-socialist elements which he found it expedient to honour for a considerable time after gaining power. The socialist wing, including a minority of important leaders, regarded this as a betrayal of their hopes and of promises that had been made them. Although the exact circumstances and sequence of events are not clear, it seems that this group was threatening to contest Hitler's leadership of the party when Hitler struck first.

There is also confusion as to what happened in Russia. The accused were charged with and convicted of conspiring with Germany and Japan to overthrow the Russian government. If they did so conspire, it is clear that the conspiracy was the consequence of a conviction that Stalin had betrayed the revolution. For years, there had been a widening rift

in the party between those who held with Stalin that a strong socialist state must first be established in Russia before trying to convert the rest of the world, and those who sympathized with Trotsky's view that Stalin's policy was bound to fail and that it was necessary to get on with world-wide revolution without a day's delay. In other words, they disagreed profoundly over the means by which the desired end, world-wide socialism, could be reached.

There are strong reasons for thinking that such purges are a periodic necessity in the one-party system. Whether or not they will require bloodshed depends on how deeply and passionately the leaders are divided and how determined both factions are to make their will prevail. But purges of some sort are necessary where free elections are not used to settle disputes over government policy. For, to set up a one-party system is to say that there is only one right way to govern the country and that the way is clear and unmistakable. If there were any reasonable doubt, the sensible thing to do would be to allow two or more parties and let them experiment in turn with their solutions to the country's problems. The one party monopolizes all political activity and it can entertain only one policy. Any man with political ambitions or with strong views on what the government ought to be doing must get into the party and try to work his way to influence and authority.

Nazis and Communists, like other people, are cranks. There is disagreement over policy within the party. When neither group can convince the other and neither will give in, the single party has, in fact, split into two parties. The peaceful way out is to allow the dissenting minority to secede openly and set up party organs of its own, and then to agree to let the people arbitrate this and any subsequent conflict between them, awarding control of the government to the group which wins the confidence of the electorate for the time being. The alternating governments of the democracies are made possible only by the unflinching and unhesitating acceptance of the convention that the party in power always accepts the verdict of the polls.

The frank adoption of this solution is barred in the one-party state because the zealots who set it up are agreed on one thing at least; they know what government policy should be and there is nothing for the public to arbitrate. Men who are willing to obliterate all other parties but their own generally will not shrink from obliterating opposition elements within the party. It becomes a question which faction will shoot first. There is no ground for thinking that Hitler enjoyed shooting old friends who had shared his struggle or that Stalin found any satisfaction in the judicial liquidation of comrades with whom he had fought and suffered for an ideal. The logic of the one-party system compels it from time to time.

So, when it is asked whether the country can afford to have half its able leaders always obstructing in opposition, the real issue is whether they are more useful there than in the cemetery. The shooting of old friends would not necessarily be bad for the body politic if there were any assurance that those who are quick on the draw somehow have also the better political opinions. There is no evidence that this is an index to statesmanship.

The prime advantage of the two-or-more-party system is that it applies the only rational test of statesmanship, the testing of policies through their practical application. The public will support one party for a while and then another. Each party experiments with its ideas while in power, and if the results are satisfactory the opposing party acknowledges it by continuing the measure after they come to power. In the past, at any rate, relatively little legislation has been repealed on a change of government.

Those who come to politics with white-hot convictions will always be impatient with government by trial and error. Before they reject it, they may well examine the alternative and ask whether they wish to put their faith to the test of violence. Those who admit that there may be things in heaven and earth they have not dreamed of will find merit in the open flexible system. Those who lay store by constitutionalism will cling to the party system because alternating governments are the effective device for keeping power

contingent. The people can govern their rulers and hold them responsible only as long as they can dismiss them and find at once a workable alternative government.

THE PARTY BATTLE AS A SHAM BATTLE

It is often complained that the party battle is a sham battle and that the parties are not divided on real issues. In part, but by no means entirely, the party battle in a working democracy is a sham battle. This is just another way of saying that the parties and the bulk of the people are sufficiently agreed on a few fundamental issues that they do not have to regard their political opponents as deadly enemies to be fought to the bitter end. The party battle will become really satisfying to the pugnacious when the issues dividing the parties cleave down through the fundamentals.

When the parties are committed to sharply opposed views about the basic principles of a just society, they are compelled to regard one another as dangerous enemies of the state to be separated from the control of the army and police at any cost. The convention of unhesitating acceptance of the verdict of the electorate breaks down. When all the elements of sham have disappeared, all parties but one will be proscribed. That one party will proclaim that all true men are united behind it to protect the fundamentals of society.

In fact, the establishment of a one-party system is a living proof that men are less united than before. If the party systems of the democracies come to take the form of a socialist party committed to extensive and rapid socialization as soon as they come to power and an opposing party which mobilizes all the anti-socialist sentiment, the convention on which alternating governments depend will face a very severe test.

It is time for someone to remark that this discussion has reached the point of complete contradiction. The argument began by finding the justification for two or more parties in the inability of the electorate to reach general agreement on what the government should do. It has now reached the conclusion that two or more parties will not work except where the people are agreed on certain fundamental matters.

This paradox will bear a great deal of reflection for whoever resolves it will have laid bare the secret of democratic politics. It is still a secret for there is no generally accepted analysis. Some hold that the necessary agreement on fundamentals is very slight, requiring no more than an agreement to disagree peaceably. But people will scarcely respect one another sufficiently to agree to disagree unless they are conscious of sharing a wider community of views and interests.

All that can be said here is that government by consent is not possible unless there is some minimum of agreement on the ends and purposes of social life. This is a very considerable achievement. However, the agreement on ends which is generally the unconscious result of tradition and education seldom encompasses means which are always consciously devised and differently conceived. Since people hold diverse and often uninformed views on what to do and how to do it in detail, political parties are necessary to organize the electorate.

The much debated question as to when a coalition government is necessary or justified may throw some light on the matter. When the nation is fighting a war for its very existence, all other aims and interests must be subordinated to the one overriding purpose of winning the war. The means necessary to win it are largely a matter of technical calculation and despite the ubiquity of arm-chair strategists most people are constrained to allow those who understand the problems to make the decisions. There appears to be sufficient general agreement on aims and purposes to enable the parties to coalesce and unite their energies and abilities.

In actual practice, it turns out not to be so simple. We know from our own experience that the various interests do not all accept subordination because they are unable to appreciate the connection between the sacrifice demanded of them and the winning of the war. There is still disagreement on the necessary means for reaching the agreed end. Winston Churchill, before he knew that he would lead a national coalition in the Second World War, made an adverse judgment on the British coalition government of the First World War. The bringing together of men of diverse tem-

peraments and views in the cabinet slowed, and sometimes watered down the vigour of, cabinet decisions. The differences of opinion which are normally fought out in the elections and on the floor of the House of Commons had to be fought out inside the cabinet.

There is no doubt a point at which the position of the nation is so obviously desperate that these differences of temperament and view cease to be a decisive factor. Britain reached that position in 1940 but never consciously faced it in 1914-18. In all emergencies short of this, coalition is a detriment rather than an aid to efficient government because of the incorrigible variety of opinion as to what ought to be done.

This abstract discussion can be summed up by saying that until human nature is greatly changed and education and knowledge are greatly improved and extended, the party system performs two indispensable functions for a democracy. First, it enables the sovereign electorate to participate in the operation of government. Secondly, it makes constitutionalism and ultimate control of government by the electorate possible by enabling the people to change their masters when they see fit to do so. The matter can be left at this point for the present and attention turned to political parties as they are found in Britain, the United States and Canada.

PARTY ORGANIZATION IN BRITAIN

A comprehensive description of political parties in any country requires a review of the political history of that country for the past hundred years, at least. Political parties cannot be clearly understood unless seen in relation to their development in their environment. Their policies and platforms cannot be appreciated except in relation to the social and economic structure which reveals their sources of support. The present purpose being limited to a preliminary study of the mechanisms and functions of government, a wide survey of political parties cannot be undertaken. The main emphasis will be on party organization.

It seems probable that the Liberal party in Britain is doomed and that its supporters will be distributed between the other two parties, the Conservative party and the Labour party. But in any case, Liberal and Conservative organizations are so similar in pattern that a description of one will serve for the other. Also, the organization of the Labour party steadily grows more like that of the others. It will be sufficient to note a few salient divergences. The basic unit in all three parties is the local constituency organization composed of all those who formally join the party and maintain their membership. The active and effective part of the local association is the small executive committee which, in turn, is very powerfully influenced by its secretary and a paid party agent, whose job it is to win the constituency in the election.

The local associations are in each case united in a national union which maintains a central party office and holds an annual conference made up of delegates from the constituency organizations. The conference elects a national executive committee which directs the work of the central office. The central office, it will be recalled, is an overall directing and co-ordinating agency devoted to the planning and winning of elections. In theory, the conference is a representative party legislature for establishing the policy of the party. But like Parliament itself, it has come under the powerful influence of its executive committee and civil service (the permanent staff of the central office). The central office works in the closest relation with the party leaders in Parliament. The party programme is drafted by the leader of the party in Parliament, the chairman of the executive committee, and the chief official of the central office. Headquarters rarely fails to have this draft approved by the annual conference of the party.

Nor does the conference choose the leader of the party. He is chosen by those members of the party who are in Parliament. As he is their leader in the critical party struggles in Parliament, it is most desirable that he should be their choice. Equally, those who lead the party in Parliament and who have, or will have, the responsibility of

making and enforcing government policy are sternly set against having the annual conference saddle them with a policy which is impracticable or impossible of application. This helps to explain the centralized party machine. The natural tendency towards oligarchy in human organization, and the inherent logic of responsible cabinet government both contribute to it.

The main divergences of the Labour party from this pattern of organization arise from the connection of the party with the trade unions. Trade unions and local trades councils as well as individuals are members of the party entitled to distinct representation in local and national organization. The local party agent is often a trade union official. Because the trade unions are powerful principalities within the party, the central organization cannot dominate the party so fully. The annual Labour party conference debates party policy more fruitfully. Yet the conference cannot force a policy on the parliamentary group of the party. After all the discussion is over, they must approve the policy before it becomes official. The parliamentary group also choose the person who is to lead them in Parliament. His position is somewhat less secure than that of the leaders of the older parties because he must be re-elected each session and he has no acknowledged claim to be Prime Minister when the party comes to power.

As part of their duties in planning and executing election campaigns, the central organizations insist on every candidate who represents the party being approved by them, making judgments on his orthodoxy in cases where doubt arises. Central party officials often want seats in Parliament, and these—and others—are recommended to the local associations. It is very rarely, however, that the central office will try to force a candidate on a local committee which is determined to pick its own although the central office may refuse its imprimatur to a particular choice. Ancillary to its principal duties, the central office carries on research in the problems of government, grinds out party literature, manages the party funds, and nurses the party press. It is active continuously and not merely at election time.

Much less is known in detail about the sources of campaign funds in Britain than in America. The two older parties rely mainly on substantial contributions from men of substance. Explicit bargains for a *quid pro quo* are not common, partly because of a high standard of political morality, partly because until very recently Britain has not maintained a protective tariff and British governments have not engaged in active promotion of economic development. Unlike governments in North America, British governments have not had vast natural resources to give away and have not been subsidizing desirable private economic enterprises such as railways. However, titles of honour have been a significant substitute for railway concessions, timber limits, and tariff increases. The parties exploit social snobbery instead of the natural resources of the country. The Labour party, for obvious reasons, has had little part in such traffic. It has drawn its funds in small amounts from a vast body of supporters, particularly through the trade unions.

The merit system of appointment to the civil service covers most government jobs and it is loyally and honestly applied. There is therefore very little room for operation of the spoils system. The patronage appointments do not begin to provide rewards for doing the drudgery of the party. In so far as voluntary workers do not come forward in sufficient numbers, they must be paid a wage. Here the Labour party has an advantage because it has the largest reserve of crusading enthusiasm. On the other hand, it is at a disadvantage on election day because few of its supporters can supply motor cars to take the voters to the polls.

The count in the indictment against political parties which sticks best to British parties is, therefore, the charge of domination by a few. Step by step with the extension of the suffrage has come progressive concentration of control in the central organs of the party. The movement is also closely connected with the increasing range and complexity of the functions of government. The amateur student of politics, let alone the average party supporter, cannot distinguish what seems desirable from what is possible, either in the technical sense of the administratively feasible or in

the political sense of attracting a majority of the votes. Thus the professional party worker who makes it his business to study such matters advances rapidly in power and prestige.

The rank and file cannot directly write the programme and choose the leaders of their party. The chief guarantee that the central organization will be sensitive to the wishes of the rank and file is, of course, the existence of the opposition party. As long as the opposition is there eager to capitalize on dissatisfaction in the ranks of its opponents, the central office and the parliamentary leaders will give anxious and courteous attention to representations from the local associations and will try to anticipate the temper of the annual conference.

PARTY ORGANIZATION IN THE UNITED STATES

It is impossible to give a simple description of party organization in the United States. Parties perform their functions in each of the forty-eight states as well as in national politics, and the necessity for linking state and federal party activity fosters complexity. Although the Republican and Democratic parties are national parties, the state is, for each of them, the vital unit of organization and the structure of each party varies from state to state.

Furthermore, there are more elections in the United States than in any other country. In the national field, there is a presidential election every four years and congressional elections every two years at fixed dates. At state elections, generally held at the same time as the national elections, the voters must choose a governor and a state legislature. In addition, many state and municipal executive and administrative posts, which in Britain and Canada are filled by appointment, are elective offices in the United States. Also, in many states, the law now requires each party to hold direct primaries (preliminary elections within the party) for the purpose of choosing party committees, party candidates and even delegates to conventions which will choose candidates. There is almost always an election in the offing for which preparation must be made.

The numerous elections and the state-national division account in large part for the hyper-organized condition of political parties and for the large numbers of professional politicians in the United States. Here, more than in any other democratic country, there is justification for calling party organization a machine, because of its intricate articulation and smooth efficiency. The professional politician handles the machine with a sure and delicate touch and the necessity for making the machine work well and almost continuously encourages apprenticeship in the profession of politics.

Yet this organization stops short of full perfection. Despite the fact that the principal popular excitement is over national issues and national elections, party organization at the national level is temporary, haphazard, and almost entirely lacking in the discipline revealed at the state level. Party organization and activity are much regulated by law but these laws are almost all state laws. For example, state laws determine how party candidates to Congress and party delegates to national as well as state nominating conventions shall be chosen.

This emphasizes the fact that it is the state organizations of the parties which are significant. Although we are mainly concerned with national and not with local, provincial, or state, government, it is necessary to give close attention to the state organization of the political parties. Fortunately, there is a general pattern to which both parties conform in most states. The pattern only will be sketched and what is said about it must be prefaced with the warning that the description will not be fully accurate for all, nor perhaps for any one state or party.

The lowest general unit of organization of the party is the local committee of the city, town, or township, formally chosen by the interested supporters of the party in a party caucus or primary. The members of these committees are all active party workers, many of whom hold municipal office or jobs in the state government when their party is in power. In the larger cities, organization goes further down into the wards and the polling subdivisions (called precincts).

The ward and precinct committees are often dominated by ward bosses and precinct captains and the more important of these figures find their way into the city organization of the party.

In the larger cities, city organization is generally linked directly with state organization of the party. In the smaller centres of population, the local committee is subordinate to the county committee which is formally chosen by a county convention or primary. Still higher stands the state central committee chosen through a primary election or by a convention to which delegates from the constituencies go. One can count on finding the more important of the local committee-men on the state committee.

It would be hazardous to say how far this formal organization, much regulated by law, represents the reality. The situation varies from state to state and often differs as between the two parties in the same state. In some of the larger cities, the party which is in the ascendant is controlled by a city boss who may hold no office in the party at all. For reasons which cannot be discussed here, the city bosses are steadily losing their power but they are still a significant factor in American politics. They have found the best soil for their growth in those cities with a large non-English speaking, foreign-born population. These masses have been generally poor and always in need of the elementary necessities of life. They have been ignorant of American institutions and ways of life and thus frequent violators of laws and regulations. They have been utterly bewildered by the complexities of the political system in which they were asked to participate.

In these circumstances, the city bosses have been those who have proved to be the best friends of the harassed immigrant and his family. Those who can spice concrete assistance in time of need with human sympathy and consideration are to be trusted to give sound advice in political matters. Unfortunately, such assistance has to be financed somehow. A man who can swing numerous votes has political power and can use it to tap the public treasury through various kinds of graft and corruption. The more

votes he controls the greater his leverage on the treasury, and the greater his financial resources the more voters who appreciate his qualities and his advice on politics. There are many sordid aspects of the power of bosses. These are well enough known without enumeration while the mitigating, if not redeeming, facts are not so widely appreciated. In any event, the present concern is with the key to the power of the bosses.

The boss who gets together a large following in this way becomes a king-maker, if not a king. Without holding any official party position, he can often determine the make-up of local party committees through his control of the deciding votes in party caucuses and primaries and he is a power to be reckoned with in the state party machine.

Control by bosses is not limited to cities with large populations of foreign origin. Every community has its poor and also the many who are perplexed by the intricacies of American politics. Organization is always affected by a tendency to oligarchy and the special features of American politics already noted feed the tendency. Another contributing factor is the extensive patronage system, the number of jobs which politicians in office can give away. United States Senators who control the federal patronage for their states can sometimes use this lever to become the state bosses of their party. State, as well as county, party bosses have not been unknown.

Even where power in the party is not gathered into a single hand, the most prominent and skilful of the local party leaders generally have a large enough following to get themselves chosen for the state central committee and that following often enables them to decide who shall be elected to the local and county committees. Thus, power does not always go with the titles to authority and, even where it does, it is often secured by manipulation rather than by the chaste methods prescribed by the democratic ideal. It must suffice to say that the realities are often very different from what the forms would indicate.

The state central committee, or the person or persons who control it, exercises functions and imposes discipline

similarly as the central office and the parliamentary leaders of the party do in Britain. The party platform for the state is made by a party convention composed of delegates from the localities. The central committee influences the choice of delegates and guides them in their deliberations. Candidates are chosen by conventions or in party primaries over which the central committees have a varying influence. The central committee plans the campaign, raises the necessary funds, and supervises the work of the local committees in striving for victory.

It is also active in national, as distinct from state, politics. It must see to it that party delegates to the presidential nominating convention are chosen by convention or direct primary as the law requires. It must conduct direct primaries for choosing the party candidates for Congress. And in the presidential and congressional elections, much of the work of carrying on the campaign, although not so much of its planning, falls to the state central committees. Generally speaking, party organization in the several states is highly centralized, strongly disciplined, and extremely efficient in converting a heterogeneous electorate into party majorities.

After the complexities of the state organization of the parties, their national organization is simple. It can almost be said that there is no permanent national organization but only a succession of temporary committees for fighting presidential elections every four years. It is true that, for the biennial congressional elections, the party caucuses in the House of Representatives and the Senate pick committees composed of one member from each state, but these committees do not run the congressional elections. Their activities mainly consist in co-operating with the state party committees.

Thus the chief national organization is the national committee nominally picked by the national convention which every four years chooses a party candidate for the Presidency. This national committee consists of two members from each state and the national convention always ratifies the nominations made by the state party organizations. It plans the presidential election, collects a campaign fund

and co-ordinates the nation-wide party effort to elect a President. Once the debris of the presidential election is cleared away, the national committee lapses into quietude and rallies only once when it issues a call for another presidential nominating convention some three years later.

The chairman of the national committee is the personal choice of the presidential candidate of the party, because he is chiefly responsible for managing the candidate's campaign. The national committee under his direction plans the larger strategy, deciding which are the doubtful states into which money, speakers, and propaganda must be poured. However, the national chairman is scarcely a commander-in-chief who passes orders to the field commanders, the state party leaders. These latter are remarkably independent, like the leaders of well-organized guerilla bands, and the authority the chairman can exercise over them depends much more on his personality and his infectious energy and enthusiasm than on his position. If the party wins the presidency, the national chairman is likely to remain active as the national party instrument for distributing patronage and implementing pre-election arrangements.

The effective authority of the national committee is limited to the presidential campaign. The committee pays little attention to the concurrent congressional elections beyond making available a portion of its campaign funds for use in them. It does not frame the national platform of the party nor share in the choice of the party candidate for president. These functions are performed by the presidential nominating convention composed of delegates chosen by the state party organizations, either in a primary or a convention. Unlike the central organizations of British parties, the national committee does not continue between elections as a planning and research agency drafting the outlines of party policy.

It is common to represent any elaborate organization as a pyramid rising from its base on the local organization to the apex of national authority. Such a figure for the American party system would show the chairman of the national committee at the apex and the ward and precinct committees

at the base. However, if the pyramid is to represent the realities of authority, the apex must be cut off at the state level. Below this level, party discipline is generally sharp and effective. But there is little discipline imposed on the state organizations from above. The party which wins the Presidency finds that it cannot escape some responsibility for the policy of the national government and thus must accord leadership to the President. The President armed with this authority and the control of patronage is a power to be reckoned with in his party, but whenever he has tried to use his power to purge the party of rebellious elements he has almost always failed.

At most, the primacy of the President is a temporary situation in the party. On his retirement or defeat, the state leaders will be again without superiors. Indeed, it is probable that the prejudice against a third term rests, not on the precedent of Washington refusing a third term but on the studied purpose of state party leaders to prevent the building up of a national leadership which might dominate the party. Generally then, authority flows from the state leaders upward as well as downward. The presidential candidate and the national platform of the party are the results of bargains between them.

The national party conventions in the United States are, it is universally agreed, like nothing else on earth. They always end with impressive demonstrations of party unity and solidarity. However, the way to that happy conclusion is marked by sharp struggles over the platform, subtle manoeuvres by state delegations over the nomination, and much secret horse-trading. If these features are studied, it will be seen that the national convention also resembles an international conference where separate nations haggle over a treaty of friendship or alliance.

The fact is that the federal system which leaves the states a large measure of autonomy has provided even more autonomy for state party organization. The great sections of the country have varying interests which it is the business of each political party to try to reconcile. Thus the national party platforms and the presidential candidates of both

parties are compromises dictated by this necessity. The national party is a loose confederation of the state parties. This is one reason why national party organization is a temporary coalition of the state parties for winning the Presidency and the spoils of office which go with it.

Another reason is the separation of powers enforced by the constitution. As we have seen, the President is the national leader of his party for the time being and exerts a unifying influence on it. If the executive were closely linked to the legislature as in Britain and the President had the power to dissolve the legislature, the members of his party in Congress would be much more disposed to work with him in trying to ensure discipline in their party, and the opposition party would have to meet this attempt at concentration of power with a comparable attempt.

As matters stand, however, Congress is elected by constituencies strongly aware of their sectional interest and, lacking any strong counteracting pressure, members of Congress are the agents of sectionalism rather than the disciplined troops of national parties standing for national policies. So the members of the parties in Congress resist party discipline at the national level for almost any purpose except the distribution of patronage.

It is true that sectionalism is nurtured by the state party leaders who can often make and unmake members of Congress. The power wielded by these leaders would largely disappear if party leadership were centralized at the national level as in Britain. On these grounds, it is sometimes argued that the elimination of local and state party bosses would open the way to disciplined national parties. However, sectionalism is something more than a racket organized and maintained by party bosses at the state level. As the parallel in Canadian party organization suggests, it is inherent in the variety of life in a country of continental sweep. Even if state party leadership were always secured in a fully democratic way, it would still give expression to sectional interests although probably not as strongly as at present.

A great deal could be said about campaign funds and patronage in the American party system but the abuses are

sufficiently notorious to need little description. The most important thing that can be said is that the abuses are by no means the universal practice. The patronage appointment of public officials, or the spoils system, is more widespread than in any other democratic country. However, it is being steadily diminished by extension of the merit system, and there have always been volunteer workers who did not ask or expect reward.

The campaign funds of the parties are not raised by contributions from the rank and file of their supporters. Exception must be made, however, for the practice of assessing the party supporters who have got government jobs through the good offices of the party. The main reliance is on substantial contributions from business interests, legitimate or otherwise, and from men of means who often, but by no means always, expect something in return. The facts that there has always been a customs tariff to be manipulated and that governments in the United States have always been promoting the economic development of a great country have ensured extremely close relations between business and government. One Republican campaign manager frankly solicited contributions from business men on the ground that these were policies of insurance on their businesses and many business men take out insurance with both parties.

The state legislatures, and to some extent Congress, have tried to regulate campaign funds by law. The most frequent provisions are aimed at securing publicity as to the source and use of party revenues, forbidding contributions by corporations and compulsory assessment of office-holders, forbidding certain kinds of expenditures and limiting the amounts to be spent by candidates. Most of the provisions are easily and consistently evaded and there is no adequate inspection or other machinery for enforcement. The chief value of these laws which must not be underestimated is to interest the public in the questions where the money comes from and where it goes.

The control of party organization at the state and city level by bosses or small cliques is a common occurrence in

the American party system. The deplorable consequences cannot be denied but they should not be exaggerated. The power of the cliques and bosses is always contingent and they will be supplanted if they do not keep their ears to the ground and attend to clearly expressed and general demands of the supporters of the party. This will be true as long as there is another party searching everywhere for available support. For example, it is pretty clear that the leaders of the Republican party did not want Wendell Willkie as their presidential candidate in 1940. But they did not dare to pull the wires necessary to defeat him because he had caught the popular imagination. The party machines have been in the same quandary before over Woodrow Wilson and both the Roosevelts.

If the rank and file of the supporters of a political party could, of their own resources, precipitate a majority opinion on men and measures, the party bosses and wire-pullers would get short shrift. Unfortunately, it is only rarely that they can. Yet a candidate must be chosen and a platform adopted. This is what gives the wire-pullers their opportunity. It also reveals their function. They act as catalysts, always ready to precipitate a majority opinion on particular issues facing the party by seeming legerdemain.

THE OLDER PARTIES IN CANADA

It is more difficult to speak about the pattern of organization of political parties in Canada because they have not had the close detailed study given to parties in Britain and United States. It is easy enough to say that one or other of the parties has a particular organization in a particular province or constituency, but that is not to say that this is the general pattern. In so far as a pattern can be discerned, it shows resemblances to both British and American but it is not a copy of either.

On the one hand, cabinet government in Canada has tended towards a centralized discipline in the hands of the party leaders in Parliament and in the legislative assemblies. On the other hand, the general environment in which Canadian parties have carried on their functions resembles

much more than in the United States than that in Britain. The North American influences are not only a federal political system in a continental country but also a heterogeneous population, a firmly rooted patronage system and very intimate relations between government and business because of a customs tariff and vigorous government assistance of private enterprise in economic development. Without any conscious copying, these factors have made for resemblances to American party organization.

The resemblances, however, are limited. Municipal elections have rarely been fought on party lines in Canada so that normally the parties have only two elections to fight in a four-year period. The parties themselves have never adopted the direct primary system. Thus the Canadian parties, unlike the American, do not need to be in continual tension preparing for the next election. Local party organization is much more casual and there are few professional politicians because they cannot find steady employment in the field of politics unless elected to the legislature. Canadian political parties are like those of the United States in their reliance on patronage, their close association with business interests and in the fact that the national parties are federations of the provincial parties of the same label. The provincial parties are unlike the state parties in being less highly organized and less responsive to the touch of professional politicians.

The lowest unit of party organization in the two old parties is the polling subdivision and party fortunes in elections depend to a great extent on the wit and zeal displayed within these small cells of the party. For the purpose of a brief outline of party structure, the basic unit of organization may be taken to be the constituency, or riding, association to which the interested supporters of the party belong. A small executive committee of the local association directs local party affairs in most matters. The rank and file of party supporters in the constituency participate in the nomination of candidates but generally the decisions as to how the election is to be fought and how party affairs

are to be managed between elections rest with the executive committee.

Party candidates for Dominion or provincial elections are chosen by conventions made up of party supporters in each constituency. The nominating conventions are sometimes closed conventions composed of delegates from the polling subdivisions and sometimes open conventions at which all the party supporters in the constituency may attend and vote. In the rural constituencies where party organization is very loose, there is likely to be a genuine contest for the nomination which is decided on the floor of the convention. In the urban constituencies, the executive of the local association of the party along with a few other actively interested party members generally manage to get their choice of candidate approved by the convention.

The active members get their way because the rank and file of party supporters are rarely sufficiently interested and sufficiently united to concentrate their votes on an alternative candidate. Moreover, if and when popular opinion does appear to be swinging to a particular person, the local party leaders are likely to respond to it. The local party leaders have not the strong grip on party organization which their counterparts often have in the United States. With rare exceptions, Canadian cities have been free of party bosses of the kind so common in the United States.

The candidate of the party and the executive of the local association have charge of the party effort in the election. They get advice and assistance, but rarely instructions, from the provincial headquarters of the party. In some provinces, there are regional or district party organizations standing between the provincial and local organizations which help to co-ordinate election campaigns in their area of the province. Because of patronage problems and other connections between the government and the riding, the executives of the local associations of the party in power at Ottawa or at the provincial capitals are likely to remain active, in greater or less degree, between elections. But the local associations of the defeated party often become somnolent and are only revived by the immediate prospect of

another election. Local party organization is not in a continuous state of tension as it is in the United States.

Above the riding associations stands the provincial association of the party composed of the active supporters of the party. Meetings of the provincial association are mainly made up of delegates from each of the provincial constituencies, members of the party who have seats in the Dominion Parliament or the provincial legislature or who were unsuccessful candidates for such seats in the last election, and representatives of the youths' and womens' organizations of the party.

The provincial association meets annually, or even less frequently, to discuss the affairs and fortunes of the party. It elects an executive and provides for a provincial party council, or management committee, which is supposed to give close attention to party affairs. The provincial council not only contains the acknowledged leaders of the party but also representatives from the constituencies and the auxiliary organizations of the party. Its membership is so numerous and scattered that it is hard to convoke it for frequent meetings and it is too unwieldy for effective discussion. As a result, it does not usually exercise much more control over party affairs than does the provincial association.

In these circumstances, the members of the party who have seats in the provincial legislature, and particularly the leaders of the party there, are the most active persons in party decisions. But the party leaders do not always have the commanding influence which their counterparts have in Britain. Their influence depends greatly on whether the party is in power, controlling the legislature and the cabinet. If the party is in power, the party leaders in the legislature have a very strong position in the provincial council and the provincial association. If the party is out of power, there is obviously something wrong which needs correction and party policy and leadership are much more open to the criticisms of the members of the council and of the association.

The party leaders do not make the official party policy or choose the official provincial leader of the party. These functions are performed by a meeting of the provincial

association of the party or by a province-wide party convention called for the purpose. The use of a representative convention to choose the party leader is in sharp contrast to the British practice of choice by the parliamentary group of the party. It is no doubt partly a copying of American practice and partly a response to the demands of democratic theory. Here again, however, it can be said that the degree of influence which the parliamentary group can exert on the choice of a new leader or on the revision of the party platform depends greatly on whether the party is in or out of power at the time.

The executive of the provincial association appoints a secretary who is a salaried official and who is normally the official provincial organizer for the party. The secretary has charge of the central party office and staff which is usually very small except at election times. The secretary and the central party office are at all times under the direction and close control of the provincial leader of the party. Their chief function is to prepare for elections and to co-ordinate the campaign throughout the province. Between elections, they pay more attention to patronage and related matters, and much less to research and education in party principles, than do the central offices of the parties in Britain.

The provincial party headquarters have yet to publish books and organize party schools and conferences to explain what the parties are about. Until very recently, the issues with which provincial governments and politics have had to deal have been few and simple compared with those arising in Britain. Consequently party policies and platforms have not been taken so seriously. Provincial politics have looked at times like a game between the "ins" and the "outs."

The party leadership maintains discipline over the members of the party in the legislature and exerts great influence in the general councils of the party. This is particularly true of the party in power. For most of the rank and file, the requirements of the game are satisfied as long as the party is in power and they do not make concerted challenges to the leadership. The leader of the party as Premier has the power to dissolve the legislature and that

helps to keep the members of the party in the legislature in line. There is considerable patronage to be distributed and control of this patronage is one of the strongest holds the member has on his constituency. Those who revolt against the leadership of their party are usually deprived of their control over patronage and they cannot count on assistance from the central organization of the party in the next election. For these reasons, the leadership and central headquarters of the provincial parties are often described as "machines."

With uncommon exceptions, this is invective rather than accurate description. Party discipline is not as strong and pervasive as in Britain. Party organization does not fall into the grip of political bosses such as are commonly found in United States. It should be noted particularly that the party leadership and central office have not the acknowledged power to veto the candidature of particular persons in the constituencies. Of course, the party leadership may, in the case of particular rebels, persuade the local constituency organizations not to re-nominate them. But the task of persuasion would be too great if there were anything approaching a general revolt in the party against the party leadership.

The contingent nature of party leadership becomes apparent when the party is defeated in the election after having had control of the government for a time. Then there is commonly a reckoning which brings new ideas and new personalities to the fore in the party and generally involves significant changes in the party programme and party leadership. Genuine machine politics with firmly seated political bosses in control are only found in provinces where one party has managed to stay in power continuously for a long period.

Our concern here is with the national organization of Canadian political parties. However, it has been necessary to describe the provincial organization because it is in the provinces that effective durable organization is found. The parties rely on it for fighting Dominion as well as provincial elections. The national organization of the parties is built on their provincial organization. The former is so frequently

changed that it is difficult to say that there is any settled permanent form.

The National Liberal Federation, set up in 1932, is, as the name indicates, a federation of provincial Liberal parties. Provincial Liberal leaders and representatives from provincial Liberal Associations are the principal elements in its composition. The National Conservative Association, formed in 1924, consisted of all those who paid membership fees but it was unsatisfactory because it did not secure, in practice, sufficient representation from the provincial Conservative parties in the outlying provinces. In its reorganized form as the Progressive Conservative Association, it is largely made up of the leaders of the provincial parties and of representatives from the provincial Progressive Conservative Associations.

These national associations of the parties meet annually to discuss party affairs. They adopt resolutions on party policy and other matters which are formally binding on the leadership. They do not, however, choose the leader of the party. In the last twenty-five years, a practice has grown up of calling a special national party convention to choose a new leader when a choice becomes necessary.

The convention comprises delegates from all the federal constituencies. In addition to selecting a leader, the convention also overhauls the party platform. The parliamentary leaders of the party are not able, as their counterparts generally are in England, to control the resolutions of the general party assembly on party policy. They are therefore unfriendly to the practice because their sense of the possible tells them that the formulae which emerge from such gatherings often cannot be implemented in important particulars.

Fortunately for them, pronouncements on party policy have not been taken in the past as seriously in Canada as in Britain. In the first place, the interest of the electorate in national policy has not been as keen or intelligent. Secondly, the national platform of a party in a country with Canada's sectional diversities must be such as will attract votes in all sections and repel as few as possible. Accordingly, the party platform is always the result of bargaining between the

provincial parties associated together as a national party and thus has tended to be made up of vague general resolutions.

It resembles the national party platforms of the United States much more than those of Britain. But party resolutions which cannot be implemented cause more embarrassment to party leaders in the Canadian Parliament than to party leaders in Congress because, as already explained, the cabinet system concentrates the responsibility for government policy on the party in power. Leaders may therefore be taunted for failure to carry out the announced policy of the party.

Each party maintains a party organizer and a central party office or headquarters in Ottawa. The party organizer is the personal choice of the party leader and both he and the headquarters staff work under the direction of the party leader. The organizer and the central office are very active during preparations for a Dominion election, planning the campaign in conjunction with the parliamentary leaders of the party. But the national parties in Canada are federations of provincial parties and they rely very heavily on provincial organization in conducting the campaign. Generally, there is a federal organizer appointed for each province but of necessity he has to work with and through the provincial organizations. Thus the role of the national party office and organizer in a Dominion election resembles that played by the national committee and national chairman in the United States rather than that carried on by the central party office in Britain.

In one respect, the influence of the national party organization in elections is even weaker than it is in the United States. The great bulk of the campaign funds for Dominion elections are not raised directly by the national organization but by the provincial organizations which allot only a part for the use of the national party office. The portion retained is used as the provincial organization wishes to use it. The central party office uses its funds to provide campaign literature and to bolster doubtful provinces and constituencies with money, speakers, and propaganda. A Dominion

election campaign is, in each party, a number of provincial efforts with some central assistance and co-ordination.

Between elections, the national party headquarters maintain only skeleton staffs performing routine services for the party, keeping records of membership, sending out party literature on request, issuing press releases, and so on. Their main function is to fight elections and not to co-ordinate their respective national parties. They do not conduct any significant amount of research into issues of public policy and they do not contribute greatly to the political education of the electorate.

The connection between the national central party office and the parliamentary leaders of the party is very close. There are, however, narrow limits to the discipline which this combination can impose on the party members in Parliament. The leaders of the party in power are obviously in a better position to control their followers than are the leaders of the opposition. The Prime Minister has the power of dissolution. The members of the party who refuse to follow the party line may lose their control over patronage and they may be denied the assistance of the national party organization in the next election. But these threats are used sparingly and are rarely enforced except where the insurgents flout or repudiate the leadership of the party.

Dissenters from the party line are not as easily impressed by such threats as in Britain. The party leadership cannot veto their candidature at the next election. The most it can do is to try to persuade the local constituency organization not to renominate them. Its success in this venture is likely to depend on whether the views for which the dissenter stands have a strong backing in his province and his constituency, and frequently they have. Even if the maverick is thus deprived of the federal nomination, his political career in the party is not necessarily ended, as it is in Britain. He may still have a strong position and a career in the provincial party. Thus the leadership generally has all it can do to maintain its position without insisting on conformity in a wide range of doctrine and policy.

In fact, the party leadership is not inherently disposed to insist on a strong party line. The cabinet itself, being representative of provinces and sections, must always compromise within itself on policy and the programme on which it can agree does not usually make heavy demands on the loyalty of the rank and file. It is significant also that the private members from particular provinces often meet in provincial caucus on important matters. In this way, provincial points of view can be impressed on the members of the cabinet from different provinces while the cabinet is deliberating on the line leadership is to follow. National party policy always has to be adjusted to the demands of provincial and sectional interests. Party discipline is generally effective but the concessions which are made beforehand ensure that its yoke will be light for most members of the party.

In summary, it is readily seen why the national parties in Canada are described as federations of provincial parties. National party organization, such as it is, is mainly representative of provincial party organizations. The latter collect most of the funds for and carry the main burden of Dominion elections. Even the cabinet is in some measure an alliance of provincial party leaders. This provincialism is general but is, of course, most marked in the case of Quebec.

The consequences of the federal character of national party organization will be considered later. It should be said here, however, that the decisive importance of provincial political organization corresponds to significant political realities. Except in war-time, provincial governments have been much closer to the people than has the Dominion government and thus the party organizations which alternately control the provincial governments have been much closer too, than any national party organization.

Provincial governments have shared with municipal governments the administration of the social services. Since the merit system of appointment was widely extended in the Dominion civil service, the provincial governments have been the main source of patronage appointments. Since the Dominion government finished with railway

building, its affairs have not attracted such close attention from private enterprise. On the other hand, the provinces have been building highway systems, a source of lucrative contracts, and they have control of the natural resources of the country. Parties which have, or may have, control of highway contracts, waterpower sites, mining resources, and timber limits would always attract financial support whether they sought it or not. These are some other reasons why the effective political organization of the older parties is provincial and not national.

No attempt will be made to lay bare the sources of campaign funds or to describe the part played by traffic in government jobs in getting voluntary service to the parties. North American influences already referred to have made Canadian practice in these matters closer to that of the United States than of Britain. The abuses have been less sensational if for no other reason than that Canada is a much poorer country than the United States. The provincial civil services still provide a large field for patronage although thorough house-cleanings on the occasion of a change of government are rare. The older parties rely much more on substantial contributions for their campaign funds than on the small donations of a multitude of supporters and many of the benefactors expect a return even if they do not expressly bargain for it.

THE C.C.F. PARTY IN CANADA

Of the several newer third parties in Canada, only the Co-operative Commonwealth Federation can be described at present as a national party. Although there are many differences in detail, the broad outlines of the formal structure of C.C.F. party organization are similar to those of the older parties. The national party is a federation of provincial C.C.F. parties. The greatest differences, however, are in the way in which the organization works. Some of the major differences in structure and operation may be pointed out.

The C.C.F. regards itself as a movement as well as a party. As a movement, it has a sense of mission which the older parties lack. The mission is the achievement of demo-

cratic socialism. Holding, as it does, that democracy in the older parties is a sham, there is great emphasis on making party organization democratic. Being unable to rely on habitual support from the voters, unceasing efforts are made to educate the electorate away from their unthinking allegiance to the older parties. Since socialism obviously cannot be achieved merely by voting for it, there is great emphasis on research into political, economic, and social problems. C.C.F. organization is at present directed more toward these aims than to winning elections.

The basic unit of organization is the local C.C.F. club with social and educational as well as political purposes. The one or more clubs in a given constituency form the constituency association. Candidates are nominated by a convention composed of the members of the association. The provincial and national organizations built on the constituency associations have careful constitutional provisions for ensuring that the rank and file of party members will be represented and heard. The party leadership, whether provincial or national, is formally subject to control and detailed direction by their respective party associations. Because the rank and file are deeply interested and highly articulate, this control is at present rather more effective than in the older parties. Frequent party conventions which are widely representative insist on the leaders giving a full account of their stewardship. Many matters which, in the older parties, would be settled in caucus by the party members of Parliament and of the legislative assemblies are dealt with in the C.C.F. party by the representative associations and conventions.

The central offices of the party, both provincial and national, are, on the whole, more continuously active than those of the older parties. In addition to preparing for and conducting elections, they are extensively engaged in research, the production of party literature, and the distribution of it to the local clubs for dissemination among their members and the public. They organize lecture tours and summer schools for education in party principles.

Alongside the insistence on democracy and education, there are provisions looking to the maintenance of strong party discipline. The central party organizations have authority to veto candidatures and to oust individuals and constituency organizations from the party. Every candidate must pledge himself to abide by the party platform and the general aims of the party. These devices are necessary, not only because the party will need strong discipline to establish a socialist society but also because, at present, there is constant danger that opportunists and hostile elements will work their way into the party and try to wreck it.

While the national organization is frankly a federation of provincial parties, the C.C.F. is unfriendly to provincialism. Few members of the C.C.F. have a vested interest in the *status quo* for which provincialism furnishes a strong defence. Thus the outlook of the C.C.F. is more specifically national than that of the older parties. Moreover, the central planning which a socialist system requires must be planning by the national government. Thus they must create a well-disciplined national party if they are to accomplish their aims. While provision is made for discussion and criticism at the formative stage of policy, there is sharp insistence that the party line be adhered to once it is formally drawn.

In its attempt to ensure that the party organization shall work democratically, the C.C.F. has thus far been free from the embarrassment which comes from accepting large donations from benefactors. Party funds are raised mainly by collecting annual fees from the mass membership of the party. Like the Labour party in Britain, it invites affiliation with trade unions and gets some revenues from that source. Some donations are always received but these come from well-wishers and enthusiasts. The C.C.F. has had no traffic with business interests. Its war chest is much smaller than that which the older parties can generally raise but most of its work is done voluntarily and enthusiastically for the sake of the cause.

There are other contrasts with the older parties which could be drawn but most of them are merely consequences of the general influences which have been illustrated. It is

impossible to say now whether the austere democracy at which C.C.F. organization aims will endure. Like other human institutions, political parties are corrupted by power and the C.C.F. has not yet been exposed seriously to its baneful influence. It is clear, however, that in its emphasis on research, education, and continuous intensive effort it has grasped what present-day conditions require of democratic parties. The C.C.F. may not be what the country needs but it does bring into sharp relief some of the defects of the older parties.

CHAPTER VII

REPRESENTATION

THIS chapter is an excursion through a number of illusions which time has laid to rest. Political democracy has never fulfilled the hopes of its more sanguine believers. For a long time, they laid these disappointments to defective machinery and put great ingenuity into devices for making the will of the people manifest and effective. The staple of theoretical political discussion, in the Anglo-Saxon world at any rate, for the fifty years preceding 1930 was how to make democracy more democratic. A number of plans for accomplishing this were tried in various parts of the world. As a result of their failure, faith in them has almost entirely disappeared and thus they need not be discussed in detail. However, the criticisms of legislatures and political parties which these devices embodied and the defects from which they themselves were shown to suffer throw very significant light on democratic politics. Also the dissatisfaction which gave rise to the experiments still remains.

The central issue is the problem of representation and some general remarks on it must first be made. Subject to a few unimportant exceptions, the members of the lower houses of the legislatures in Britain, United States, and Canada, are chosen by the voters in single-member constituencies. The candidate with a plurality, i.e., the largest number of votes though not necessarily a majority of the votes cast, is elected. He is said to represent the constituency even though, in a three-or-more-cornered fight, he may get much less than an absolute majority. Whether he has an absolute majority or not, those who voted against him are disposed to think of themselves as unrepresented, while many of those who voted for him regard him only as the lesser of two or more evils. When we remember how various opinions are, it is clear that no member of Parliament can begin to represent them all and that a good deal of dissatisfaction is inevitable.

WHAT DOES THE REPRESENTATIVE REPRESENT?

To understand what this so-called representation is or can be, it is necessary to recall some history and venture some analysis. The democracies of the ancient world practised direct democracy. The citizens of the city state participated directly in the making of laws and the governing of the city. Lacking the device of representation, the Roman Republic perished when it expanded too far beyond the confines of the city. Representation is a mediaeval invention apparently originating in the practice of the early Christian Church in calling together representative councils to deal with matters affecting the government of Christendom. With the emergence of kings in the feudal societies of Europe, the custom of calling representatives from the communities under their sway developed. Simon de Montfort called representatives of the shires and boroughs to Westminster in 1265 with momentous results but he did not invent representation. It was widely used in the mediaeval world.

In the thirteenth century, and in most instances up to the nineteenth century, the shire or borough was a close-knit community with a high degree of economic self-sufficiency in which individuals were bound together by customary relationships. What division of labour and economic specialization there was, was local, not national and international. Without the modern means of communication, there was little movement of individuals from one community to another, and little intercourse between communities. People lived and died and found the entire meaning of their lives in a single area. The dialects which often differ from shire to shire testify to the distinctiveness of these communities which were represented.

They were social unities in much the same sense in which today, rightly or wrongly, we attribute unity to the nation. We have little difficulty in thinking that the government or an ambassador can represent the common interests of the nation in international negotiations. It used to be just as easy, and perhaps easier, to think that a representative could represent the shire or borough in the councils of the king. He could air the grievances of his community and combine

with other representatives in petitioning the king to redress them.

A constituency today is not such a community with a distinctive unity of its own which one man can represent. Constituencies are now strips of territory in which so many voters live and their boundaries are always being readjusted so as to give representation by population. This practice of readjusting the boundaries of constituencies gives the clue to the modern theory of representation. It is individuals and not communities which are represented.¹ This is partly due to the modern emphasis on individualism. But the older theory could not be maintained today because there are no longer local communities with a distinctive unity to be represented. Economic specialization transcends the local community and also the nation. The vital interests of individuals are linked to persons, circumstances, and events far beyond the locality.

Modern transport and communications have given extraordinary mobility to the population making them a nation of transients without deep consciousness of locality. As has already been pointed out, the great ease of communication has facilitated the organization of many communities of interest, economic, social, and cultural, which are at least nation-wide and not connected with any locality. The local undertaker is now likely to be at least as much interested in the shop-talk of the annual embalmers' convention as in the death of his neighbours. The result is that the older social unity based on territory has been broken into a multitude of diverse specialized interests. And governments today are engaged in all sorts of activities which can help or harm these specialized interests thus inviting people to mix calculations concerning their narrow interests with their opinions about public policy.

The older localism and the theory of representation appropriate to it have been outmoded. It may help to emphasize the change to point to a remaining vestige of the

¹Practice does not entirely accord with theory. The member of Parliament does represent certain common interests of his community as when he secures a new highway or a new post office

older theory. The constitutions of United States and Canada give equal, or something approaching equal, representation to the states and provinces in the upper chamber of the federal legislatures. The states and provinces are still regarded as communities which can be represented, and are entitled to be represented as such, and not merely as heterogeneous collections of individuals. But even here, the forces just discussed have been at work and the unity of particular states and provinces in the federations is somewhat artificial.

The situation today is profoundly different in another respect. As long as the king was in reality the government he expressed the general interests of the nation, however defective that expression may have been. Even if he was no more than a leader in war he made and executed the policy of national defence. The representatives to his councils acknowledged this although grudgingly. Their function was to act as a check on him, limiting the demands made by the whole on the parts. The king and his civil service withstood these pressures, asserting their interpretation of what was needed to maintain the unity and integrity of the country.

When the king was reduced to a figurehead or dethroned, the legislature composed of representatives of local interests became supreme. If the members of the legislature represented only their constituencies, who now spoke for the nation? It was a recognition of the inescapable necessity of some body with a unified conception of the national interest which led the framers of the first republican constitution of France to declare that the deputy (i.e., the member of Parliament) belongs to the nation. He must represent the nation and speak for it and not for the narrow purposes of his constituency.

The same provision appeared in the constitution of the German Republic of 1919. However, despite some distinguished advocacy of it, this view never caught hold in Britain and North America where it is the general assumption that the member of Parliament represents the electors of his constituency. Despite this seeming defect in Anglo-American theory, Britain, United States, and Canada have not suffered as much from lack of national unity as have continental

European countries. The explanation is that theory is of little account unless it is workable in practice and to say that the deputy belongs to the nation accomplishes nothing unless the deputy and a majority of his fellows can agree on what should be done on behalf of the nation. Continental democracies generally speaking never reached this agreement, always being plagued by a multiple-party system while the two-party system in Anglo-Saxon countries has almost always produced a majority view of the national interest.

The truth is that when the king lost his power and gave up his function of integrating the parts of the country as a whole, political parties took his place. We have said that the executive and civil service govern the country, but their ability to do it depends on the support of a political party which has won a majority of the electorate. As has already been argued political parties in a two-party system are not divisive but unifying influences. In their never-ceasing search for votes they build bridges across local and personal prejudices, sectional and occupational antagonisms. In a democracy which cannot fall back on some authoritative statement of the national interest but must always manufacture the national interest out of the consent of the people, the unifying function is indispensable. European experience indicates that where political parties fail to perform it, dictators arise who do.

The dilemma should now be clear. The dominant theory and the social structure of our time combine to insist that members of Parliament must represent individuals. The fundamental impossibility of representing heterogeneous individual opinions and group interests through representatives chosen by a plurality of votes in single-member constituencies has caused profound dissatisfaction and numerous panaceas.

The aim of most of these schemes is to make the legislature reflect more accurately the diversity of opinions and interests in the electorate. This diversity is increased and made much more complex by the luxuriant development of organized groups in which the like-minded gather together to further a common occupational or cultural interest. These groupings cut across the territorial constituency and seek to

express themselves politically in other ways than through their votes. They always promote narrow purposes and often clash with one another, thus adding to the babel of individual opinions, the collision of group interests.

The integrating function is difficult to perform under the best of circumstances. Any scheme of representation which does not enable it to be performed makes representative government impossible. The reformers generally have not understood this and almost all their schemes are discredited because they make integration more difficult, if not impossible. With these basic considerations in mind, attention may be turned to some of the reforms, their tendencies and results.

As long as there are only two parties and two candidates in a constituency, one will always receive an absolute majority of votes cast. However, when there are three or more parties the victor will often be elected by less than an absolute majority and, the more parties there are, the smaller the fraction of the vote which will suffice to elect. A candidate who in no circumstances could have wheedled an absolute majority of the voters into voting for him may be elected.

The devices for meeting this specific defect are the second ballot and the alternative vote. The second ballot was much used in continental Europe and involved an immediate second election between the two candidates who were at the top of the list in the first election. Experience with it was most unsatisfactory and it need not be discussed. The alternative vote requires the voters to mark 1 opposite their first choice, and if they wish to express second or third alternative choices, to mark 2 and 3 opposite their names. Then, if the counting of first preferences does not give any candidate an absolute majority, the candidate at the bottom of the poll is counted out and the second choices of his supporters are distributed according to their preferences. A second counting of the ballots follows to see if the totals of first and second choice give any candidate an absolute majority. If not, the process continues until an absolute majority emerges. In this way, the election of a candidate who is at least regarded as tolerable by more than half the voters who voted is assured.

The alternative vote is used in provincial elections in Alberta and Manitoba. It has something to recommend it. Unfortunately, however, it has bad tendencies in enabling any two parties to combine at a poll to knock out a feared third party. And even where this particular practice is not indulged, there are almost certain to be secret pre-election bargains between parties which commit them to later action in the legislature not in accord with the declared policies of the parties before the election. Any additional tendency in this direction is to be deplored and will increase rather than decrease dissatisfaction with the representative system.

Neither of these devices has had much appeal to the vigorous reformers because it still leaves in every constituency a substantial or large minority whose candidate or candidates were defeated and who think they are denied representation. It is even possible in a two-party fight, for one party which wins its seats by small majorities and gathers a very light vote in the seats it loses, to win a majority of all seats with less than a majority of the total vote. This will rarely happen but it is not uncommon for a party to win a much smaller proportion of the seats than its proportion of the total vote would warrant if it is individuals who are being represented.

The situation is aggravated by the emergence of third and fourth parties because a minority of votes will elect a candidate and two or more substantial minorities will claim to be unrepresented. The Liberal party in Britain has suffered heavily in this way. In 1924, it took about 20 per cent of the popular vote and won less than 8 per cent of the seats and in 1929, it took about 25 per cent of the popular vote and only about 10 per cent of the seats. Such disparities are likely to be unusual but they illustrate the problem.

PROPORTIONAL REPRESENTATION

Starting from the assumption that representation in the legislature ought to be a true image of the nation regarded as a collection of individuals, the reformers of the late nineteenth century sought to devise a scheme which would

give representation to every significant body of opinion in proportion to its numbers. They sought equity in representation and not merely endorsement of candidates by an absolute majority. Some three hundred different schemes of proportional representation have been devised but they are of two main types. One is known as the single transferable vote, also known as the Hare system after its original inventor, and the other is the list system. Each requires for its working multiple-member constituencies with enough members so that any substantial minority can expect to elect at least one of its candidates. The constituencies are necessarily very large in area and population if the number of members of Parliament is to be kept within reasonable limits.

The single transferable vote requires a constituency with at least five members if it is to achieve its purpose of enabling each substantial minority to elect a member. Voters mark their choices in order of preference, 1, 2, 3, 4, 5. The quota of votes necessary for election is determined² and as soon as that number of first preferences is counted for particular candidates, they are declared elected and the remaining ballots for those candidates as first choice are transferred to the second choice and so on.

Thus any party whose disciplined supporters vote the party ticket throughout will waste no votes and will elect one of its candidates every time it fills a quota. Every minority which can fill a quota will elect a member to represent its views. Variants of the single transferable vote, of which there are many, are used in municipal elections in a few cities in the United States. The single transferable vote is used in provincial elections in Alberta and Manitoba in the multiple-member constituencies of Calgary, Edmonton, and Winnipeg.

There are also many variants of the list system. The most thoroughgoing of these was used in Germany under the Weimar Republic. Germany was divided into thirty-five mammoth constituencies ranging from one to two million

²The quota is determined by dividing the number of votes cast by the number of seats to be filled plus one, and then adding one to the result

voters each. These constituencies were grouped together, generally in pairs, into eighteen larger areas called unions, and the unions in turn were lumped into one national constituency called the Reich. Each of the thirty-five constituencies was to send eleven members to the Reichstag, each union, and also the Reich, to send an indefinite number depending on the voting. Each party prepared lists of candidates for the constituencies, the unions and the Reich. Elections were held in the thirty-five constituencies only. The voter was required to select his party and vote for the whole list or not at all. A quota of 60,000 votes elected a candidate for the party.

If the X party got 230,000 votes for its list in Y constituency, the first three candidates on its list were elected with 50,000 votes to spare. In the Z constituency, grouped with Y constituency in a union, the party might elect two members and have 45,000 votes left over. The two surpluses were then transferred in a bookkeeping transaction to the union and added together, giving the party an elected member on its union list with 35,000 votes unused. The union surpluses of each party were added together in the same way and transferred to the Reich where they would elect another party candidate for every 60,000 votes transferred. Ignoring minor qualifications such as the untransferability of small surpluses and visualizing the process at work in each constituency and for each party, it is clear that no single party could waste more than 59,999 votes in the entire country. Party representation in the Reichstag mirrored almost exactly its voting strength. In spite of this or, as some say, because of it, came Hitler!

Proportional representation obviously accomplishes its prime purpose of giving representation to minorities. This may be admitted to be a gain in so far as the well established parties in a two-party system ignore the interests of small bodies of opinion. But the perils to which it exposes democratic government far outweigh any possible advantage. Its main vicious tendencies are two; first, the splintering of political parties and secondly, the increase in undesirable centralization of control of the political parties. The list

system is more dangerous in these respects than the single transferable vote system. The extent to which the latter promotes these evil tendencies depends on the size of the multiple-member constituencies and the number of members each of them is to elect. If a multiple-member constituency elects no more than three members, the damage may not be serious. It has been pointed out, however, that it must elect about twice this number if it is to effect its main purpose of giving fair representation to minorities. The following comments are applicable to both systems except as noted.

THE VICES OF PROPORTIONAL REPRESENTATION

To establish the tendency of proportional representation towards a multiplication of parties, one could rely on the actual results in the countries of continental Europe which used proportional representation. For example, in Germany before the adoption of the list system in 1919, there were only half a dozen significant political parties. When Hitler abolished all parties in 1933, there were twice that number of significant parties as well as a score of sects endeavouring to assert themselves as political parties. Such results could be, and to some extent no doubt were, due to other causes. So it is important to see why the tendency must be in that direction.

Where only two parties are in the field, each knows it must work for a majority in the constituency and in the country. Each knows it must put out bait for the wavering voters, generally the moderates who look at both sides of a question. Each must court significant minorities and these necessities make for a middle-of-the-road platform and for candidates who have a general appeal. That is to say, minorities are not ignored and they are not entirely unrepresented because one or other of the party platforms takes their less extreme demands into account.

On the other hand, minority groups of opinion know that their chances of electing members of their own are slim except where they happen to be heavily concentrated in particular constituencies. They tend to swing to one or other of the

two parties hoping for some consideration in return for support and often bargaining for it. While the middle-of-the-road programme may not attract them, it does not positively repel. With reluctance, yet with some minimum of consent, they come into the fold. Extreme views do not construct a party for their propagation unless conditions are such as to encourage them over a long period of time.

When it becomes electorally possible for minorities to count confidently on getting at least a few seats, they reject middle-of-the-road programmes and set out in full cry to realize their interpretation of the good life. Once a small bloc gets into Parliament, a minority has a forum from which to expound its gospel and it hopes, as sects always do, to win the world to the obvious truth of its views. Once the core of a party is formed, it tends like all organization to become more important than its purposes and thus to perpetuate itself.

When the minorities begin to withdraw their support from the two old parties, these, in turn, change their character. The premium paid for moderation diminishes and they tend to take more dogmatic positions hoping to hold a following with strong convictions. If the French-speaking people of Canada were to consolidate in a minority party of their own, the two old parties would naturally become more truculent in their expression of English-speaking Protestant views. Such action repels still other groups which then seek self-expression, e.g., the Irish Catholics. As the number of significant parties grows, it becomes unlikely that any one party will get an absolute majority of the seats in the legislature. Not expecting to have the sole responsibility of governing, parties are no longer under the necessity of working out a practicable platform. Since responsibility can no longer be concentrated on them, they cease to feel a sense of responsibility. They devise their programmes to attract a fervent following whose particular interests they push rather than to provide an acceptable policy for the country as a whole.

In periods of unrest, the spectacle of extreme views making headway in the country rouses opposing schools of extremism. When the extreme left steadily increases its

representation in the legislature, panic rises on the extreme right and a party, or parties, appears to combat the danger of revolution, real or imagined. The violent demeanour of this reactionary element pushes the moderate left toward the extreme left. Some such pattern of development was seen in both Italy and Germany during the rise of Fascism. This degeneration of politics into open warfare was not solely caused, but it was actively fostered, by proportional representation.

The parties, therefore, are not only splintered but they become dogmatic sects and rabid factions promoting their own narrow creeds. All parties become radical, in one sense or another, and less disposed to the inevitable compromises of a democratic system. While few of the economic groups, farmers, workers, manufacturers, and a thousand lesser occupations, set up their own parties, they exact concessions from the parties much more easily than under a two-party system. It is said that the midwives of Germany once threatened to set up their own party if the government did not meet their demands. A strong economic interest may win one of the small parties to its views on economic matters because the small party, unlike the great parties of the two-party system, does not have to consider the reaction of opposing interest groups. It will never have the unquestioned power to implement the bargain. In this way, the economic and other group interests pick their champions and expect them to stand firm on the floor of the legislature. This increases the intransigence of parties.

The inevitable result is weak government. All governments are coalitions chosen, not by the country in the election, but through huckstering in the legislature. The several parties in the coalition, backed by opposing interests of various kinds, often find that the only thing they can agree to do is to do nothing. Their policies are more colourless than those of governments in a two-party system. At best, governments are short-lived compromise arrangements and at worst, they are paralytics. If resolute government action must be taken, it can only be taken by relieving the government from responsibility to the legislature, i.e., by executive decree. Such was the actual course of events in Germany

and Italy. Workable democratic government had become impossible before the Nazis and Fascists came to power. They did not so much destroy democracy as fill a gap left by its demise.

Government by short-lived coalitions of several parties makes it impossible for the electorate to enforce responsibility. If the government fails to do what it should obviously have done, each party retorts that it never had the power to do it and blames the other parties in the coalition for the failure. It is rarely clear who should be punished at the next election. The gap between the electorate and the government—too wide under the best of circumstances—is still further widened. In the two-party system, the party which wins the election drives forward something resembling its announced policy and the opposed ranks of voters across the country feel triumph and chagrin if the policy works well, and disappointment and prophetic insight if it works ill. After all, this is what they voted for or against. But the policy of a compromise coalition is always one on which they never were asked to express an opinion. Apathy and disgust deepen with this sense of remoteness from the whole process of governing.

These evils of group coalition government are all made inevitable by any thoroughgoing system of proportional representation. Under the list system, it is harder for groups to get the initial organization necessary for preparing party lists in a number of constituencies across the country. But if this hurdle can be jumped, it promotes thorough fragmentation of the political parties. The Hare system, on the other hand, is not likely to result in so numerous splinter parties. However, it makes it much easier to take the initial steps. A candidate for a new party can be put up at any time in one constituency and even if he fails to win, the votes for him are not wholly lost but transferred to second or third choices. If he does win, the group is encouraged to take further easy steps in other constituencies.

Furthermore, proportional representation destroys the intimate connection of the member with his constituency. In the single-member constituency, he is likely to be a prominent person widely known and he can visit every section of it.

He can make contact with all groups and learn the configuration of opinion. In the large multiple-member constituency with hundreds of thousands of voters, relatively few voters know the candidates and the candidates cannot cover the whole constituency. Each cultivates his own sect which confirms his prejudices rather than enlarging his outlook. More rigid doctrinaires, and fewer flexible persons of broad sympathy and general electoral appeal, go to the legislature. Lacking broad support in their constituency, they have no foundation for an independent stand in the councils of their party. The supporters of the Hare system have always claimed that it would send more independent-minded men to Parliament. This can mean, in reality, no more than that they would be independent of the discipline of the parties in the two-party system. They are likely to fall under a narrower and sharper discipline in the splinter parties which support them. These sects are likely to tolerate independence even less than the old parties which were invariably seeking an overall majority rather than some special brand of salvation.

This brings us to the second great evil of proportional representation, the tendency towards more strongly disciplined control of the party by the central party machine. The list system cannot help but work in this direction. Taking the German example, the central party organization necessarily picked the candidates on the Reich list. In the large constituencies and huge unions, it is extremely difficult to get the rank and file of the party to agree on a long list of candidates. This also brings intervention of the central organization. It is much more practicable to centralize control of local party organization when constituencies number in tens instead of hundreds. The officers of the party and their favourites always get their names at the head of the party list and since voters must vote for the list and not for particular candidates they, at least, are always sure of election. Young men are thus greatly handicapped in advancing to leadership while everything favours the perpetuation of the old guard and the extension of its influence over the party. Independent-minded candidates must not be put on the list

because their presence there may make voters reject the whole list.

The parties become much less responsive to opinion in the constituencies. Members are not in close touch with their constituencies and, as has been remarked, they are not sufficiently sure of solid personal backing in the constituency to press insistently for revision in party policy. By-elections which are such useful barometers of opinion are not possible under proportional representation. The old guard who head the party lists are always sure of election and need not cultivate the constituencies carefully at all. Because they do not have to wage a stern fight for election, they remain active and influential much longer than would otherwise be possible. Men who represent new currents of opinion in the party and thus threaten the established leadership cannot get on the party list at all, or if they do, are likely to be removed when their rivalry becomes serious. Party leadership becomes unresponsive, rigid, and bureaucratic. The Hare system when it works through large constituencies has similar tendencies although, in the absence of the rigid list, they are not likely to be nearly so marked.

THE REAL DILEMMAS IN REPRESENTATION

The conclusion is that democracy is more likely to be destroyed than saved by such drastic reforms in electoral machinery. It will be asked then whether there is no cure for the defective representation of opinion in democratic representative government. The discussion has already suggested that minority views are not completely unrepresented in the two-party system. The electorate is, as the electoral reformers argue, made up of a great many opinions and groups of opinion. Each party must try to conciliate enough of these views to win a majority of the seats in the legislature and that means taking these views into account in its platform. That is why party programmes seem to the holders of strong views to be lacking in vigour. Of course, no party which expects to have the sole responsibility for governing can embrace many of the extremes of minority opinion if for

no other reason than that they are often contradictory and inconsistent. No party can put an anti-vaccinationist plank in its platform and at the same time meet the demands of more enlightened opinion for effective protection of public health. A little reflection will bring many similar possible clashes to mind. Proportional representation can find representation for precious views of all kinds because it ignores the necessity of finding a single coherent and consistent public policy for the country as a whole.

We come again to some hard realities which were mentioned earlier. Government action is collective action taken on behalf of the whole and, if it is not to be self-defeating, it cannot give expression to all the cross-purposes entertained by particular members and parts of the whole. Presumably, something is to be accomplished by common action and if it is to be done with consent, it cannot pander to extremes. Also, the immediate effect of much of government policy is to shift burdens from one set of shoulders to another. As long as this is so, there will be disgruntled minorities even though they get direct representation in the legislature. Even if the majority in the legislature agree to do nothing, the minorities which had hoped to shift some of their burdens will be disgruntled.

There is therefore no cure. The best that can be offered is a palliative to be found through government being limited in its actions in so far as is humanly possible to matters on which something approaching a community of view can be found. Democratic government may not survive unless action is so limited and unless a sensitive mechanism for discovering what policies of action can hope to find a broad base of consent is available for use. The two-party system is the best instrument so far found for this delicate task. There may be others but they have not yet appeared.

It will be retorted that election by a mere plurality in contests between three or more parties is intolerable. That may be our conclusion if such contests are to become a general and permanent feature of political life. It is not at all clear, however, that degeneration into a multiple-party system is inevitable. All our social institutions must face

periodic crises. The sick do not always die and institutions often surmount their crises. An electorate which has had experience of the ease of fixing responsibility under the two-party system and cabinet government is likely to abandon a party which shows that it has little chance of gaining a majority by running third in several successive elections. Less rational considerations such as the desire to be on the winning side work in the same direction. It is probable that this fate has overtaken the Liberal party in Britain. The excision of such a party is painful, as all surgical operations are, but those who genuinely cherish democratic government will not shrink from it if it ensures the continued life of the two-party system.

The United States lacks the cabinet system as a device for clearly fixing responsibility but it has a most effective substitute for the maintenance of the two-party system in its national politics. The Presidency cannot be won by a plurality but only by a majority of the votes of the electoral college. To win a majority of these votes, a party must generally win a majority of the popular vote. Parties which cannot come within striking distance of this great prize have always been brushed aside and are likely to continue to get scant support.

A return to a two-party system will not be of any great advantage to democracy if, for example, a socialist party determined on wholesale socialization faces as its sole competitor a Conservative or Liberal party determined to preserve the *status quo*. In such circumstances, solid community of view is extremely problematical, even among the socialists themselves. What a democratic government does in the name of all must be limited to things which a substantial majority either actively approve or regard as tolerable. Here we come upon a factor which should have been mentioned much earlier. It would not do to blame proportional representation entirely for the splintering of parties. An underlying influence of great strength has been the continually extending range of the activities of government.

In the heyday of laissez-faire, it was relatively easy to come to some community of view on government policy

because the possible courses of government action under the restraining influence of that philosophy were sharply limited. Once it was generally admitted that it might be desirable for government to intervene in any or all sectors of social life, the possible courses of government action reached infinity and tended to produce a sharper diversity of view in the electorate. Groups which could formerly agree on foreign policy and on the aims and means of maintaining internal order began to divide on issues affecting economic and social welfare. Is the government to aid industry or agriculture, or both, with concrete privileges? Is it to discourage trusts and combines and to encourage small businesses with loans at low interest? Is it to fix wages but not profits or agricultural prices? Is it to provide social security for the industrial wage earner but not for the independent worker on his own account? Some reflection on the contents of Chapter III will show that measures which benefit one group are an immediate burden to another group and that, in so far as the people judge government action by immediate consequences and considerations of narrow advantage, the increase of government activities tends to multiply greatly the divisions of opinion in the electorate. In fact, if people judged solely by these criteria, democratic government would have expired long ago. No one will suggest that they are uninfluenced by such criteria and hearkening to them makes it extraordinarily difficult to prevent either the breaking up of the two-party system into an agglomeration of interest groups or its degeneration from a sham battle into a real battle between left and right.

The fact that government now does so much which affects intimately the life of everyone is at the root of much of the dissatisfaction over the existing system of representation. In a constituency of diverse economic occupations and interests many of which are directly regulated or assisted and all of which are in some peculiar way affected by government, how can one man know enough about these interests to share in making the laws governing them or have wide enough sympathies to represent their point of view in criticizing administration? Where farmers, industrial workers, industrial

employers, independent tradesmen, and so forth feel the impact of government action in diverse ways, how can the member of Parliament who may be doctor, lawyer, worker, or employer represent all their interests fairly? It is not a problem of the representation of precious sects but of representing legitimate interests engaged in the necessary work of making a livelihood for themselves and producing the material needs of the community. In the nature of things, the member of Parliament has only his partial and limited experience to go on. Yet he and others like him make the laws affecting these interests and supervise their administration.

Often it is not so much the question of principle but the detailed application of admitted principle which is involved. It is generally agreed that monopolies should be regulated but not, in most cases, that they should be dissolved. Just what should be done to protect the public interest without unnecessarily interfering with the productive functions which the monopoly is, in effect, licensed to perform is a matter of great intricacy. Employers may accede to the general view that minimum wage laws are necessary, but the application of such laws in all their ramified detail may only harass industry without effectively protecting the workers unless a high order of intelligence and a wide range of knowledge are brought to bear. There is no dissent at all from the proposition that safety devices in factories should be enforced, but the safety regulations must be worked out to meet the conditions in every kind of factory and for every kind of machinery.

In each of these cases and in many others, the interests directly concerned, whether workers, employers, or whatever, have some unique knowledge and experience relevant to the choice of effective means. Yet generally the laws in question are made by and administered by legislators and civil servants who cannot fully grasp the import of this knowledge and experience. The point is sufficiently clinched by the story of the steamship company which found itself compelled to carry two sets of lifeboats, one set to satisfy rigid governmental specifications and the other to save the lives of its

passengers in the narrow choppy seas in which the company operated. If representation through the electoral system is inadequate where the problem is only one of means, it is still less satisfactory in fields where sharp conflicts over principle make representation of the views of the interests at stake still more urgent.

OCCUPATIONAL VERSUS TERRITORIAL REPRESENTATION

This is a much more searching criticism than that put forward by the advocates of proportional representation. It was ably developed and widely discussed in many quarters in the first thirty years of the twentieth century. It denies that individuals as such can be fully represented by anyone. It is not only that the industrial worker cannot be represented in the legislature by the lawyer who is retained by his employer, he cannot be represented even by a fellow-worker because they rarely share more than a few interests in common. Outside his working hours, he is devoted to Christian Science, horticulture, and the promotion of temperance legislation. The man who works next to him is a rank materialist who invests his modest savings in shares of a distillery company and whose enthusiasms are prize-fighting and compulsory state medicine. A third fellow-worker who is a candidate for the legislature plays host to another set of leisure interests. He cannot fully represent the other two if only because their interests outside the factory are either inconsistent or unsympathetic to one another. At most, he can merely represent the common interests of their working hours.

According to this analysis, the much deplored apathy of the electorate cannot be overcome as long as sole reliance is placed on the attempt to represent individuals in territorial constituencies. In an election campaign, voters are expected to give attention to and reach sensible conclusions on a great many issues of different kinds. Interest cannot be aroused for the obvious reason that no one can come to an intelligent answer on matters of which he has little or no knowledge and on which his experience of life affords no guide. Thus,

for one issue which touches off thought and informed reflection in a voter, there are dozens which do not rouse a flicker of attention.

This lack of attention is the common-sense retort of the sensible man who recognizes his limitations and thinks it better to mind his own affairs as best he can trusting that there are others who can judge the merits of such complicated issues. The ideal of the citizen who makes the public interest the overriding concern of his life is impossible, at least in a complex civilization where central governments are involved in a multitude of activities, because it would leave him no time for his own unique functions in society. To which one might add that the wholly public man has no private life and is therefore likely to be an unhappy, if not an unbalanced, person.

The analysis accordingly concludes that in addition to the blundering of the amateur legislator in highly technical legislation and his inability to represent the many sides of many-sided individuals, there is the inability of the voter to register an intelligent vote. In a highly specialized society, government is bound to be a highly specialized matter too. The attempt to bring all issues to an amateur level of discussion and decision denudes them of content. The questions on which the public should arbitrate between the parties are so many and so recondite that only a few of them—and these in garbled and unreal versions—are ever put to the public. Consequently, if the vital functions in the hands of distant central governments continue to increase and are subject only to the shadowy popular control now possible, government will become steadily more bureaucratic and unresponsive until, in the end, it becomes irresponsible as well as unrepresentative.

This criticism of which only a brief, and therefore inaccurate, outline has been given was developed in great detail in the first two decades of this century. It received its fullest and most telling expression from the guild socialists in Britain. This group was certain that economic life must be fully collectivized in order to secure social justice. They

were equally concerned that socialism should be thoroughly democratic. In those days before socialists became captivated by the idea of central planning, the guild socialists were convinced that the nationalizing of industry under control of the central government would not bring the workers significantly closer to the democratic control of industry. They would only be exchanging one imperious employer, the big corporation, for a bigger and more imperious employer, the state, because the workers could not hope to control the publicly-owned industry through the existing machinery of representative government. That is to say, the problem, as the guild socialists saw it, was substantially similar to the one to which their arguments have been applied here.

The guild socialists thought of each industry, whether agriculture, mining, lumbering, fishing, or one of the manufacturing or distributive trades, as performing an economic function for society. They proposed that each such function should be governed by a guild or association of those who worked by hand or brain in the particular industry. Legislation for and administration of the industry would be in the hands of a representative council elected by the members of the guild. Not only producers but also consumers and cultural interests of various kinds should have similar institutions of government. Each person would then have a voice in a producer, a consumer, and such cultural, associations as attracted his interest. Most of the highly specialized activities now performed by the general national government should be transferred to the more competent specialized representative councils which would be more amenable to democratic control. The legislature of the central or national government should be made up of representatives from the governing councils of the various guilds and associations. Because all the industries and important functions in the society would be governing themselves much as municipalities now govern themselves, the central government would have very few functions beyond those of defence, police, and the settling of disputes between the various self-governing guilds and associations.

The electorate for each of these representative councils, including the national legislature, would be automatically determined by function. These electorates, because they would be asked to rule on matters relating to their intimate daily life and only on those matters, would bring knowledge, experience, and a lively interest to their decisions. The representatives they chose for the governing councils would not only have this knowledge, experience and interest, but would also fully represent their constituency because of the complete identity of its interest with theirs. The result would be a revitalizing of democracy.

The plans of the guild socialists and of others who took up their underlying idea proposed that functional or occupational representation should supersede the outmoded territorial representation. Every important specialized interest or function would form a separate electorate and choose representatives to a council which would govern its affairs. The national legislature with which we are concerned here would be composed largely of representatives of the organized functions and not of the people living in particular territorial areas. This is the alarming final logic thought to be involved in a highly specialized society. Neither territorial communities nor individuals but only functions can be represented. Function becomes so important that it obscures the individual. Also, too much preoccupation with the clear articulation and vindication of function weakens the sense of community, of belonging to something which contains but transcends the function. The deputies do not belong to the nation or even to the individual voters in the constituencies but only to their separate functions.

The guild socialist proposals, of which there were several varying in detail, were never adopted in Britain and the movement has disappeared. Ironically enough, the only concrete applications of their ideas have been by dictators and not by democrats. Soviet organization in Russia has several kinds of councils representative of functional groups. Nor are their ideas necessarily tied to socialism. Nazi Germany organized numerous councils representative of eco-

nomic interests professedly to provide for self-government of industry and trade. Fascist Italy set up the most complete structure of this kind and in 1939 the National Council of Corporations, chosen by occupational representation, superseded the Chamber of Deputies which had always been chosen by territorial representation. As Mussolini explained, this was the corporate state. Corporatism was a marked feature of the Dollfuss dictatorship in Austria. Its current exponent is the Salazar regime in Portugal.

THE VICES OF OCCUPATIONAL REPRESENTATION

The details of these functional institutions are not vitally important for present purposes. All the guild socialist proposals had inherent defects which ensured their discredit. They suffered from the vice of too much complicated machinery, none of which gave any reasonable assurance of safeguarding and enforcing the general interests of the whole against the parts for whose self-expression such anxious care was taken. To put it in the terms of the discussion at the beginning of this chapter, there was no adequate provision for ensuring a strong overall authority with a unified conception of the national interest. It is, by the way, a realization of this which has won over the socialists to central planning by a strong central government.

Firmly-seated dictators enforce on every group and function a view of the national interest whether or not one agrees with their interpretation. Thus they have no need to fear such self-expression of functional organizations as they allow. The dictators are in the position of the kings already adverted to, who found it politic and even necessary to have representation of the communities under their rule. There is no doubt that present-day communities have functional as well as territorial habitations, and dictators need the co-operation of group interests. However, democracies do not want to employ a dictator to decide for them what should be done in the national interest. Accordingly, the basic difficulty about adopting full-fledged functional representation is that it would eliminate the party

system, the democratic instrument for producing and enforcing unified views of the national interest.

It should not be necessary to offer extended proof for this assertion. It is always easier to see the narrow interests which divide us than the common ones which unite us. As the case for functional representation so clearly shows, it would arouse a vivid interest where political parties now fail to do so. A system of representation which invites this diverse self-expression would be disruptive of party loyalties which now bridge many of the chasms between group and sectional interests. The representatives chosen by the groups would be chosen because they were ardent champions of the interests and not because they were benevolent, yielding, and conciliatory. They would be held sternly to their task by a united constituency agreed on what it wanted. There would be as many parties as there are interests.

To put it in its broadest terms, the representatives of the great interests, labour, management, and agriculture would stand by the demands of their constituencies and the most likely result would be, as in the case of proportional representation, paralysis. If a would-be dictator were planning to make his strong-arm methods indispensable, he could scarcely do better than promote functional representation.

The conclusion on functional representation is the same as that on proportional representation. In a democracy, the collective action undertaken by government must put its main emphasis on what unites rather than on what divides. There is no need then for every interest to be specially represented in political decisions. It is only when the government runs everything and everybody that the demand of every interest for representation becomes legitimate. Within a framework of order firmly maintained by consent because it is in the main limited to those things on which consent, however grudging, can be gained, all sorts of diversities may be permitted self-assertion. Individuals may live rich lives engrossed in a great variety of interests, even though these interests lack direct political representation. The present scheme of representation through single-member territorial constituencies seems better calculated to meet the imperative

requirements demanded of a representative system in a democracy than any of the schemes so far proposed for supplanting it.

Yet, it is sufficiently clear that the common interest almost always requires the circumscription or regulation of particular interests or mediation by the government between conflicting interests. In an interdependent society with an advanced technology like ours, this regulation and mediation are always complex questions and, as the argument for occupational representation shows, the interests involved need to be represented in some way. Fortunately, there are other ways of representing them than by giving them seats in the legislature. Interests may—and do—organize lobbies to influence the government and the legislature. They can be—and often are—represented on advisory committees attached to the government departments which administer the laws affecting group interests. They even get representation in the administration itself, as when the board enforcing minimum wage laws includes representatives of employers and employees. These forms of participation in government by organized interests and pressure groups will be discussed in later chapters.

THE INITIATIVE AND THE REFERENDUM

Dissatisfaction with representative institutions led to still another proposal for making democracy more democratic: initiative and referendum. The diagnosis behind this proposal made the political parties the villains of the piece, attributing the ills of democracy to the fact that the parties got between the electorate and the legislature. The legislators forgot their pledges, enacted bad, or failed to enact good, legislation because the parties which dominate the legislature serve interests other than those of the people. Underlying this analysis was the assumption that the electorate could be counted on for wisdom and a unified conception of the public good if only it were enabled to express itself. The opportunity could be created by authorizing the voters to by-pass the parties and the legislature and participate directly in law-making.

The referendum is provided for by enacting a law that, on petition of a small percentage of voters, particular laws enacted by the legislature shall be suspended until a popular plebiscite is taken on them. The initiative similarly enables some fraction of the voters to petition for a particular law to be drafted and submitted to the electorate for their decision. These two devices which generally go together were in use in several of the democracies of continental Europe. In the first three decades of this century, some twenty states of the United States adopted them. The movement spilled over into Western Canada but the sole remnant of it in Canada today is the Direct Legislation Act of Alberta providing for the initiative and referendum. Many Canadian provinces, however, have made use of the plebiscite for getting an expression of popular opinion on particular issues, particularly the liquor question.

In Britain, significantly, these schemes of direct legislation have never had serious advocacy. It was realized that direct legislation is incompatible with the practice of responsible parliamentary government. The cabinet is responsible to the legislature for its administration of the law and the cabinet will decline to take responsibility unless the legislature enacts the laws it thinks necessary. Direct legislation by the people on vitally important matters or in any substantial volume would make this kind of government impossible. It would either deny to the cabinet the legislation which the cabinet thinks necessary, or it would impose on the cabinet responsibility for the administration of laws the cabinet disliked. Under these conditions, a sensible cabinet would either resign or seek a dissolution of the legislature.

Worse still, since the laws to be made by the people are to correct the errant will of the legislature, the cabinet would find the legislature pushing it one way and the people pulling it another. The cabinet must enforce the law made by the people but it can also be voted down by the majority in the legislature. Thus, the introduction of direct legislation into the parliamentary system would require the abolition of the rule that the cabinet must retain the confidence of the

legislature, i.e., the abolition of responsible parliamentary government.

It is clear that Canadian experimenting with direct legislation is due to the influence of American thought and example. Where there are fixed election dates, where the legislature and executive are separated and may be deadlocked, there is perhaps some room for direct participation of the people. At any rate, direct legislation is not so obviously incompatible with the American form of government. The experience of many American states with political corruption and boss-controlled legislatures provided a great temptation for popular intervention. Direct legislation by the electorate has put some useful legislation in force in some states and as a standing threat against parties and legislatures which have eluded popular control it may be of some use. However, there are other ways of restoring a measure of popular control and the defects of direct legislation far outweigh its advantages.

In the first place, law-making in a complex society is not a simple process. To many, the moral issue in proposals for prohibition may be quite clear. The effectiveness of such legislation if enacted depends on its detailed provisions such as the definition of intoxicating, what is a medicinal use, the apparatus for controlling import and manufacture, and the question whether it is purchase and sale only, or use as well, which are to be prohibited. These are complex questions. And if use is prohibited, enforcement depends on how far the police are to be authorized to search premises and persons on suspicion. Who will say that such interference with the right of privacy is not another and more complex question?

Legislation of this kind and in this detail cannot be got on the ballot paper in readily understandable terms, let alone the public being able to discern what is really involved. Complex legislation should only be enacted after extended debate and discussion have eliminated crudities and obscurities, foreseen difficulties and provided for them, and tempered the wind as much as possible to the particular private interests which are to be shorn by the law. Direct legislation requires the voter to take it or leave it in the raw form in which the

zealots framed it without any modification by minority protests.

Proposals of this kind assume that the laws which should be made for the common good are simple questions on which a unified popular will infallibly singles out the correct answer. In fact, the electorate entertains many views shaded in various ways and a majority opinion has to be created by organization and propaganda. The parties are professional organizers of opinion and they do not ignore such opportunities. The multiplying of the occasions of voting is not likely to diminish greatly the power of party machines. The special interests which will be directly advanced or prejudiced by the proposed law spend money and pour out propaganda. For example, experience shows that both the temperance and the liquor interests can be counted on for zeal and overstatement, and they bombard the electorate with biased information and arguments in plebiscites on the liquor question. The influence of parties and special interests is by no means eliminated.

Direct legislation is supposed to educate the citizen and revive his interest in public affairs. But experience in the United States does not support this argument. Many voters who go to the polls and vote for candidates for office do not vote at all on the laws submitted for their decision on the same ballot. Measures have often been passed or rejected with little more than one-quarter of the electorate voting. This suggests that many voters feel themselves more competent to choose men than to make laws. The instinct is sound. If the candidates put forward by the parties are not to their liking, those who feel keenly the need to improve the quality of political life can take more effective steps than resort to direct legislation. Through active participation in party affairs, they can influence the choice of candidates with a much smaller expenditure of time and energy than it takes to learn enough to vote wisely on particular measures.

Reverting to the discussion of the last chapter, it is clear that direct legislation flies in the face of the principle that the political parties take the responsibility for public policy and for administering and enforcing the laws, and that the

voters do all they can as voters when they examine the stewardship of the parties at election times. The people cannot directly make the laws and govern the country. Perhaps a prohibition law cannot be enforced at all. Certainly it cannot be enforced except when the executive, the government of the day, puts great vigour and determination behind it. If the people want the laws enforced the only way open to them is to concentrate responsibility for the detailed provisions of the laws and their administration on the political party which currently enjoys the support of a majority and then punish it for its failures at election time. Between elections they can warn their parties of their desires and intentions by influence on the local party associations. The members of the parties in the legislature are, or can be made, extremely sensitive to clearly expressed opinion in the country.

Reliance on direct legislation has been declining steadily in the United States. In part, this may be because its purposes have been largely accomplished. The features of American politics against which it was a protest are much less prominent than they were a generation or more ago. Also, no doubt, its defects have been an important factor. Another influence in its decline is more speculative. As already remarked, belief in the efficacy of direct legislation depends on a belief in a united popular will. It is probably significant that in America, at any rate, direct legislation was mainly adopted in states where one interest, that of agriculture, was predominant. In these states, it was possible, although not wholly correct, to think that a united popular will would emerge.

At the very same time, in the highly specialized industrial society of Britain, the guild socialists were expounding the inherent diversity of interest in the nation. The emphasis of discussion in the last two decades on the clash of interests in the nation and on the inevitability of class war has brought to the fore a new generation of reformers who assume that the people are irreconcilably divided into classes and that therefore no united will for the common good can emerge without the surgery of revolution. The pendulum swings

between extremes, and this view may turn out to be as unwarranted as the more naive democratic beliefs of the nineteenth and early twentieth centuries about the united will of the people. Some considerations bearing on the question will be introduced in the next chapter.

The conclusions on the reforms discussed in this chapter may be summarized. As far as machinery goes, the two-party system offers the best, if not the only, means for maintaining liberal democratic government. Single-member territorial constituencies where every voter has one vote regardless of his interests is the best mode of representation for encouraging the continuance of the two-party system. This kind of representation is admittedly defective at several points and many of the criticisms rehearsed here are partially valid. If democracies are to meet the substance of these criticisms, the attempt should be made with means other than radical reform of the electoral system.

CHAPTER VIII

PRESSURE GROUPS

A NUMBER of considerations touched on in earlier chapters must now be drawn together. The first is the importance of groups and group interests in present-day political life. The impulse to associate together arises out of natural gregariousness and those who share a particular skill, experience, or outlook on life will always respond to one another if they are given the chance. Modern democracy has provided very wide freedom of association, and the ease of transport and communication makes it possible for persons with common or similar interests, experience, and outlook to organize on a national and even international scale. The result has been a spontaneous group life without parallel in history. The great hotels in the centre of networks of transportation are rarely free from the raucous fraternity of conventions. These groups are of a great variety and are not limited, as discussion sometimes seems to suggest, to those which share a common interest based on the intense economic specialization of the modern world.

Although economic interest groups are of special, and perhaps even fateful, significance when government reaches out to regulate many aspects of economic life, they are not necessarily the most active and powerful groups. Activity depends more on intensity of conviction and this is often strongest in crusading fraternities with no economic axe to grind. The power of any group, in democratic politics at any rate, depends on the degree of vigour and single-mindedness it exhibits, and on numbers. Other things being equal, the bodies with the largest membership are likely to be the most effective because they can muster the most votes. Thus war veterans' organizations, in so far as they can agree on what they want, are extremely powerful although not organized around a common economic interest or function. Of the economic

interest groups, one might hazard that agricultural associations and trade unions will exert the strongest push and pull on public policy in the future. An organization of consumers which naturally includes everyone would overtop all other economic interest groups. But for reasons already suggested, the consumer interest is extremely difficult to harness in an effective organization. The most successful form of consumers' organization has been the consumers' co-operatives. The importance of this movement in giving concrete expression to common interests shared, but not adequately realized, by producer groups of diverse and often conflicting special interests is often overlooked.

THE PROS AND CONS OF LOBBYING

Moreover, the widening range of governmental action affects most of the organized interests in ways which they think favourable or adverse. Every time the government intervenes in economic or social matters, it sets going a chain of consequences which affects the welfare of a number of groups. Organized interests think that their aims and purposes can be advanced or retarded by legislation. Thus, at every session of the legislature, legislation is proposed which some groups want to support and some groups want to defeat or modify. Groups which have not yet got advantages from governmental action are encouraged to organize for the purpose of securing it.

It must also be remembered that most laws do not become settled issues merely because a majority in the legislature approves them. Most modern legislation requires continuous administration to accomplish its purposes. Unlike the law of gravity, it is not self-enforcing. To fit the law to the almost infinite variety of situations, the government is given substantial discretionary power by the legislature. The complexity of the conditions which government undertakes to regulate are such as to make it impossible for the government to know fully what it is about unless it can draw on the knowledge and experience of the interests affected. In many fields, it is quite possible for government to cause

serious damage as well as unnecessary nuisance to the interests being regulated without accomplishing the purpose intended by the regulation. Therefore day-to-day administration is of even more vital concern to the interest groups than the enactment of the legislation itself.

These are the circumstances underlying the demand for representation of interests in some way which will connect the affected interests directly with the process of government and not limit their communication to what can be expressed in voting for a candidate in a territorial constituency once in two or three or four years. In countries where the agitation for functional representation in the legislature made no headway, the interest groups have sought other means of access to government. Unable to take a hand directly in the making of laws and in the daily administration of them, they have resorted to influence and pressure. What is familiarly known as lobbying is the most notorious but not the only method by which group interests of various kinds communicate with the government. These methods will be discussed here and in a later chapter dealing with the administrative process. First, however, some cognizance must be taken of the widespread view that lobbying and kindred practices are improper topics for genteel discussion.

Lobbying of the government and the legislature by special interests rouses much indignation and alarm. Some of it is clearly justified because the lobbying interests have sometimes stooped to bribery and corruption. Also the clandestine character of much of the lobbying arouses natural suspicion. Backstairs influence always smells of intrigue, and is objectionable in method if not in content. The average citizen who has no one to lobby for him is angered by the ease with which organized interests maintain close and intimate connection with government and he comes to the common-sense conclusion that they would not continue the practice unless it paid dividends. Undoubtedly, organized interests get results from their contact with government, often at the expense of unorganized interests. For example, the consumer interest, largely unorganized, always pays for

the services which government provides for producer groups.

These and other points form the case against lobbying. But the real question is whether the practice should be suppressed or encouraged to become more respectable. As long as it is thought to be wholly evil, consultation between government and the interests will rely greatly on backstairs methods. If consultation is recognized as legitimate and even necessary, and required to be carried on openly, it will become as respectable as general community opinion demands. Moreover, the answer to the pressure of selfish interests may be counter-pressure of other interests with diverse aims. One of the pillars of the democratic way of life is freedom of association and the answer to organization of special interests is counter-organization. The only thing preventing any significant social interest, economic or otherwise, from enjoying consultation with the government is lack of energy and initiative to organize for that purpose. Everyone who has leverage on a bloc of votes can get himself heard by democratic governments.

The objection to lobbying, however, goes beyond these immediate considerations. The truth is that the practice is a denial of certain cherished nineteenth-century beliefs about democracy. These beliefs are that the people, free of oppression by arbitrary governments and privileged classes, all want the same things of government. They want government to act for the good of all and not for any narrow, selfish purpose. That is to say, the sovereign people are essentially devoted to the public good, and the will of the people, if not corrupted or deflected, unerringly concentrates in a general will, a unified will for the good of all. Somehow—it was never very clear how—the people in electing representatives to the legislature informed them of the content of the general will and suffused them with a sense of its imperative. It was believed that a legislature so chosen and insulated from all outside influence except the mandate of the voters at the polls would produce in its legislation the highest possible expression of the common good. Therefore, it was wrong for any individual or group to rush to the

capital and try to explain the bearing of things to the legislature and the government. Either they had the presumption to think they had some private revelation of the common good or they were trying to nourish a special interest at the expense of the public interest.

Earlier discussion has indicated that this picture of a people wholly absorbed in the public as distinct from the private good, and of a general will, an agreed conception of the common good arising from that absorption, is untrue to the facts. If it were true, there would be no more room for political parties than for lobbying. People are not absorbed in public questions and it is difficult to see how they could ever give more than a minor fraction of their time to them. It may be that a supreme being standing above the struggles of life, or that men who are able to eliminate all passion from their deliberations, can perceive *the* common good purged of all contamination from narrow special interests. But the men who can achieve such detachment are rare, and divine revelations of the common good vouchsafed to men appear to be various and are far from bringing them to a consensus. It is true that most of the members of the community, or nation, will whatever is necessary to preserve the community but that will often lacks specific content. While it enables us to agree to resist a foreign aggressor, it does not tell us how to do it or at whose expense.

Therefore, as a practical matter of deciding what government is to do in the common or national interest, the choice is between meek submission to some dictated formula, and a formulation, always partial and incomplete, which emerges from the competition, clash and compromise of a great variety of individual and group interests. A democracy must choose the latter. The question which then faces us is how can a legislature which is insulated from all contact with the varied interests of men except what the members of the legislature bring to it relate the common good to the particular "goods" which men pursue. Does the common good consist of a partly-informed guess of the legislature at the general will of the people or in arbitration between interests in the light

of all the data which can be discovered from whatever source? If the latter is even partly correct, government must make contact with all interests which are strong enough to make their voices heard.

DIVERSE GROUP INTERESTS AND DEMOCRACY

This analysis is far from doing justice to all the factors involved. It understates, just as the democratic beliefs under review overstated, the measure of spontaneous agreement in the community. It leaves aside, for the time being, the role of political leadership in finding amid the clash of interests the accommodations which will attract the support of majorities. It perhaps suggests by its emphasis that all organized interests are selfish interests, which of course is not true. Many organizations find their common interest in being their weaker brothers' keepers.

It certainly suggests that interest groups are more single-minded than they really are. Few people are fanatical enough to stake everything on one interest and thus most of those who share a particular interest are reluctant to push it to the limit because that would jeopardize other interests which they cherish. The organized farmers (except those mainly or solely engaged in dairying and stock-raising) are interested in a high price for grain. If this were their only interest, they would push for unlimited manufacture and sale of liquor. In fact, most of them feel they have a stake in a temperate, or even an abstemious, society and this moderates the agricultural lobby. A study of the membership of any interest group would show that almost every member has other interests which moderate his support of this particular interest. The multiplying of interests not only enriches life but also provides an automatic check on extremism. A peaceful society becomes possible—although not guaranteed—through a delicate equilibrium of interests without demanding the agreement of everybody on everything.

It should be clear from these considerations that we have only scratched the surface of the question of the place of

interest groups in a democracy. It might be argued, at least for the sake of argument, that what has been called democracy in the last hundred years could never have flourished if there had been on every issue the manifest general will which many yearn for. A society in agreement in detail as to what was right would have muzzled the cranks, throttled discussion, and trampled on minorities, exhibiting all the earmarks of a totalitarian regime and impoverishing life for the sake of a few hard and fast conceptions of what was good.

Government by discussion and peaceful adjustment of differences has its origin and its significance in the fact of numerous diverse interests. Each interest is convinced of its own worth and therefore determined to survive and thrive. Being unable—and also unwilling—to ensure its position through a domination of all other interests, it is compelled to seek accommodations with some of these interests and, through a series of shifting combinations, to try to prevent any one interest from dominating all the others. To put it in the terms of international politics, it is the technique of balance of power, so deplored by those who believe in a general will of all good nations for an international common good. The reason why the balance of power between nations is so much more precarious than the equipoise of interests in a democracy is that the members of the nation have put all their eggs in one basket—"my country, right or wrong!" The egoism of nations is not moderated by the factor which moderates the thrust of interest groups—the divided allegiance of their members.

This digression is a luxury of which we can afford only a taste. It does tend to confirm the suggestion that the existence and lively activity of interest groups are closely connected with democracy. At any rate, democratic government has always been involved in maintaining an equilibrium between groups. This has never been an easy task and it requires the continuous services of a number of highly skilled politicians searching for the accommodations which will attract majority support. Thus democracy is not something

which can be won today and guaranteed for posterity. It is always on trial. The trial becomes increasingly severe as government activities expand and affect more and more deeply the welfare of an ever larger number of interest groups.

As the two previous chapters indicate, the job of appeasing interests by giving them privileges which are immediately, if not ultimately, at the expense of others has a divisive rather than a unifying tendency and it becomes harder to mobilize majorities which will accept all these activities as contributions to the common good or the national interest. Yet whether government activity continues to expand or declines, democratic governments must mediate between interests. The mediating will be most successful if it is done in the light of all the available information including that tendered by the interests themselves.

Much more is generally known about the activities of pressure groups in the United States than in Britain or Canada. There are a number of reasons for the great quantity of data available on the United States. It is a country of "joiners," where the fullest advantage has been taken of freedom of association. No other government has to take account of so wide a range of diversity of interests, most of them organized. In no other country do pressure groups so openly approach the government. The process of law-making is a free-for-all. The majority party does not monopolize the defining of public policy and the executive does not monopolize the drafting of an authoritative legislative programme. The laws are made by Congress and its numerous committees. The committees are always open to suggestion and afford hearings to interested parties. Accordingly, an organized interest can hope to influence legislation by lobbying individual congressmen and by putting its case before the appropriate congressional committees. Because the activities of pressure groups are so open and obvious they get a great deal of publicity and much careful study by students of government.

In Britain and Canada where the cabinet formulates policy and party discipline ensures its adoption in substantially

the form proposed, pressure groups cannot hope to get far by lobbying individual members of Parliament or urging their case on parliamentary committees. These avenues of influence are not entirely neglected but the most important representations must be made directly or indirectly to the cabinet. Little is publicly known of what goes on when the cabinet receives delegations or written representations and still less can be said certainly of their influence on the cabinet's final decision. Equally little is known of what takes place in secret party caucus where the cabinet has to clear serious modifications and adjustments of policy with its supporters. Thus pressure groups work more unobtrusively and with less publicity than in the United States. Where the party and the cabinet insist on making policy and have to take full responsibility for it, there is less candour in acknowledging the influence of pressure groups. Also frequent congressional investigations of lobbying in the United States have brought a good deal of information to light and encouraged further private investigation and research.

For these reasons, much less is known in detail in Britain and Canada than in the United States about the collaboration of interests with government. It is known that they are at work and that they do influence legislation but the influence is hard to measure. In the United States it is often possible to describe the provisions of a particular law in terms of a compromise between the numerous groups which lobbied openly on both sides. In Britain and Canada, on the surface at any rate, the law represents the agreed policy of the majority party and the cabinet. The account of the activities of pressure groups given here deals largely with the American experience.

PRESSURE GROUPS IN THE UNITED STATES

It is impossible to say how many organized group interests are in active contact with the national government at Washington but it runs into thousands. Hundreds of different groups maintain offices in Washington. However, by no means all of these organizations are really effective, recognized by Congressmen as being genuinely representative of the

interests concerned and possessed of sufficient voting strength and propaganda power to compel anxious consideration. While all the groups with offices in Washington maintain a representative to look after their interests, only the larger and stronger groups are equipped with all the modern means of research and propaganda. They also employ professional lobbyists, or legislative agents as they prefer to be called, and pay them highly for their services. These agents must be well versed in the intricacies of legislative procedure, at home in the labyrinths of administration, and reeking with plausibility. They are generally journalists, lawyers, ex-Congressmen, and former civil servants.

A classified list of some of the most powerful pressure groups compiled before World War II shows thirteen trade associations (representing industrial and commercial interests), ten agricultural, eight labour, ten professional, nine women's, eight reform, and eleven patriotic and nationalist organizations. Perhaps the most broadly inclusive and effective of the capitalist groups are the United States Chamber of Commerce, and the National Association of Manufacturers which in 1906 formed the National Industrial Council to supply expert lobbying against labour legislation and later participated in setting up the Department of Commerce and other agencies in the Federal government. Agricultural interests have found expression in many groups, notably the American Farm Bureau Federation which has held the "farm bloc" together in Congress, the National Grange, and the National Farmers' Union, the most militant in recent years in its fight for legislative action in aid of agriculture.

The three principal large groups representing organized labour are: the American Federation of Labor, which has played an active and influential role in the formulation and enactment of legislation concerning labour such as employers' liability acts and workmen's compensation laws, the four Railroad Brotherhoods which, among other things, secured the passage of the Adamson eight-hour law in 1916, and the Committee on Industrial Organization which occupies the foreground today through its sponsorship of the Political Action Committee.

The professional organizations are not as powerful as the economic interests because they lack the financial resources of the business groups and the numbers of the labour and agricultural associations, but they do possess an asset which is of prime importance in public affairs, namely, technical knowledge. This knowledge enables them to exert considerable influence upon legislators and administrators. For example, the American Medical Association with a membership well over the 100,000 mark was particularly active in securing the adoption of the pure food laws. It has exerted pressure for the establishment of a federal department of health, the reorganization of the health activities of the national government, the extension of hospital facilities for war veterans, and against social insurance laws, particularly those providing for health insurance. Another professional organization, the National Education Association, has pushed plans for a federal department of education and has favoured such reforms as a law prohibiting profits on the manufacture and sale of munitions, a law providing for unemployment insurance, a federal child labour law, and laws for protection of freedom of speech for teachers in the classroom.

The women's organizations, particularly the General Federation of Women's Clubs and the League of Women Voters, have brought a large and influential opinion to bear in favour of measures for the censorship of books and moving pictures and have campaigned for better homes, conservation, civil service reform, prohibition enforcement, education, social legislation, Americanization, and international co-operation for peace. In many of these agitations, they have co-operated with other reformist groups found in the United States. Of these, perhaps the most outstanding in the whole history of pressure groups was the Anti-Saloon League of the organized churches which was largely responsible for the enactment of temperance legislation from 1893 on, and often drafted such legislation. Looking at the extraordinary range of interests represented by organizations in Washington and noting their frank, persistent, and widespread legislative activity, observers have described them as a third House of

Congress, operating outside the constitution, it is true, but not lacking effectiveness on that account.

These pressure groups conduct their campaigns on three fronts. They try to influence congressional nominations and elections. They maintain direct contact with, and apply pressure on, members of Congress and on officials. They pour out propaganda in the hope of influencing public opinion.

Pressure groups often act on the theory that simpler and more effective control over legislation is to be had by securing the nomination and election of friendly legislators than by attempting to influence them after they are elected. It does not matter whether candidates or prospective candidates are Democrats or Republicans; they are supported or opposed according to their stand on the questions in which the particular lobby is interested. Those who aspire to Congress are questioned on their views and if willing to give pre-election promises, they are given support in the campaign in various ways, including money contributions to the candidates' campaign funds. Both the "wets" and the "drys" in the struggles over prohibition supported candidates financially. Big business which is often long on money and short in numerical voting strength commonly contributes to the campaign funds of particular candidates.

It should be noted that this traffic is encouraged by the lack of clear precise party programmes and the weakness of party discipline. If the parties had clear firm policies, the promise of a candidate to support the special claims of a pressure group would not be worth buying. If the central party organization had, as in Britain, a virtual veto on the candidature of particular aspirants, the tools of special interests would have great difficulty in getting a nomination. The weakness of the national parties is the opportunity of diverse interests of every kind.

If an interest group has a large membership, its delivery of effective support in an election campaign is simpler. If it is well organized and able to persuade its members how to vote, it can bring heavy pressure to bear in any constituency where it has significant voting strength. The American Federation of Labor because of the size and compactness of

its membership has long been successful in ensuring the election of particular candidates friendly to labour and in defeating hostile candidates. The Farm Bureau Federation has also had signal success in influencing elections. The Bureau keeps a close check on the legislative record of Congressmen from agricultural constituencies and brings that record to the attention of voters at the next election. Today, the Committee on Industrial Organization is making a tremendous effort to mobilize the labour vote behind candidates who adhere to the objectives of the Political Action Committee.

Alone or in combination with other groups, interests can ensure the election of a number of favourably disposed Congressmen who form a bloc in Congress, supporting what the interests want with little regard for party lines or party platforms. If these legislators do not live up to their promises, they are marked for defeat at the next election. However, this is not enough. Countless pressures from all directions play on all Congressmen and it is necessary to supply sympathizers with data and to counteract other pressures. The lobbies maintain offices in Washington because they want to be close to Congress to express their views directly on all measures which interest them and to maintain contact with such members of Congress as they hope to impress.

The oldest form of direct pressure on legislators is the social lobby which still persists although its results are generally thought to be meagre. Members of Congress are often wined and dined by legislative agents just for the sake of getting acquainted. New members particularly are singled out and the lobbies do much to make them feel at home in Washington. But members of Congress cannot be bought for the price of a meal and there is no attempt to do so. The purpose is to establish friendly relations as a prelude to feeding the legislator with information and persuasive arguments.

It has already been pointed out that legislators today are inadequately informed on most of the subjects with which they have to deal. Devices for supplying them with accurate

data are lacking or inadequate and busy lawmakers cannot do more than a fraction of their own research. But lobbyists on both sides of almost every question are well supplied with information and eager to impart it. They are the chief source of information pro and con on many issues which come before Congress. The members of Congress whose minds are already made up can draw supporting data and arguments from this source. Those who are in doubt and conscious of their ignorance can be fairly sure that they will get much of the relevant data and arguments by listening to all sides of the story from the interest groups concerned. Naturally, the information is biased but some of the truth always emerges from the clash of opposites.

The real work of legislation, as we have seen, is done in the congressional committees and therefore lobbyists take special pains to educate members of the committees whose field of work affects them. The committees hold hearings at which they invite evidence from all the interests concerned in a particular bill. These hearings often have a good deal of resemblance to the proceedings of a court with lobbyists appearing as counsel and witnesses on both sides, and the members of the committee acting as judge and jury. Of course, the committees are expected to gather information from all possible sources, and officials from the government departments appear to put governmental data and points of view at the disposal of the committee. The evidence of officials may not be wholly impartial either but it will correct many of the exaggerations and partial truths of the pressure groups.

The well organized groups go to great pains to convince Congressmen that their constituents are solidly behind the group demands. They persuade their own members and all the prominent citizens who are sympathetic to their point of view to shower Congressmen with letters, telegrams, memorials, and resolutions urging the legislators to vote for or against particular measures. Even though the opinions expressed in the "form letters" often used are clearly inspired by interest groups, the Congressman cannot afford to ignore

them completely because the senders may have espoused the opinions expressed in them. Such organizations as the Chamber of Commerce, the Farm Bureau Federation and the American Federation of Labor with huge memberships can pour a literal avalanche of letters and resolutions on legislative bodies. The professional associations can also make an impressive showing. When the American Medical Association (supported by 135,000 doctors all organized locally into about 2,000 county units) asks its members to write, and to persuade their friends and patients to write, to their representative at Washington, a heavy mail can be anticipated.

The reform organizations also use the same technique. One Anti-Saloon League official claimed that he alone had arranged for the sending of 900 telegrams in a single day. On one occasion in the nineteen-twenties, when the Naval Affairs Committee of the House of Representatives was considering the proposals of the administration for a naval building programme, the National Council for the Prevention of War bombarded the committee with letters and telegrams until the committee decided to cut the programme by two-thirds. The night before the Senate voted on the question of American adherence to the World Court in 1935, Father Coughlin, the radio priest, persuaded thousands of his listeners to telegraph their Senator urging rejection. The Senate did reject it and the telegrams are believed to have been an important factor in their decision. A related technique is the sending of delegations to impress the legislature. In 1927, delegates from ten national women's organizations who were joined together in the Conference on the Cause and Cure of War, marched to the Capitol and presented to the Senate 10,000 resolutions of women's organizations across the country supporting the ratification of the Kellogg Pact to outlaw war.

Pressure groups not only inspire and support legislation which they favour; they often draft it and present it to congressional committees. They also maintain direct contact with the administration which, through its discretionary powers, can do much to help or harm the interests of the

various groups. How to work your way through the bureaucratic maze at Washington to the official who can and will deal with your problem instead of referring you to someone else is a distinct branch of learning and all the important pressure groups employ experts who have made this province of knowledge their own. They negotiate with officials, investigate administrative practices, and inform officials of the point of view of their groups on such practices. This is an extremely important part of the work of pressure groups and it will be considered in more detail when the administrative process is discussed in a later chapter.

Finally, pressure groups try to mould public opinion. The surest guarantee of success is to convince a large section of the electorate of the justice of the group's claims. Almost every channel of communication is used to proclaim the gospel of the group to the public. Speeches are prepared for sympathetic members of Congress. Books and pamphlets pour out in a steady stream. Special articles and news releases are supplied to the press. The radio is used and the motion pictures are not neglected. Speakers are supplied to churches, schools, luncheon clubs, and public forums. When the public utility industry was trying to discredit public ownership of public utilities, it not only used all these common methods of trying to influence public opinion but also tried to mould the educational system to its purposes. It made extensive efforts to eliminate public school text books which spoke favourably of public ownership and supplied the schools with hundreds of thousands of specially prepared booklets. It endowed public utility research bureaux in universities which were expected to find facts supporting its views. The grand scope of its activities is indicated by the fact that in one year it sponsored more than ten thousand addresses which were heard by an estimated million and a half people.

Most pressure groups, of course, work on a much smaller educational programme and few of them think it worth while to try to work through the schools and universities because they want quick results on current issues. But they are all anxious within the limits of their resources to influence public opinion.

It has been argued at length here that as long as government is expected to carry on its present wide range of functions affecting the welfare of interest groups, close contact between the interests and the government is legitimate and even necessary. That does not mean that all the methods used by pressure groups should be approved or even tolerated. Bribery and corruption have long been offences against the criminal law. The problem of dealing with such methods is one of detection and punishment. Sinister influences in elections are already outlawed in most states but, as has already been noted, these laws are not effectively enforced.

Respecting the non-criminal methods of persuasion and propaganda brought to bear on Congress, public officials and public opinion by pressure groups, believers in democracy (which is, at bottom, government by persuasion) will find it difficult to distinguish between forms of persuasion which are legitimate and those which are not. The important issue at stake arises out of other distinctions, the distinction between interests which are effectively organized for pressure and those which are not, and perhaps the distinction between those interests with lavish funds and those without. This last is doubtful because small financial resources can often be compensated for by organization and numerical voting strength. The problem is how to protect the unorganized interests, and specifically in the economic field, how to organize the general consumer interest to counterbalance the whole range of producer interests. Aside from the difficulty of defining what is evil in the genuinely persuasive practices of pressure groups, the really forbidding difficulty is that of enforcing any law which might be made.

These considerations help to explain why, despite forty years of agitation for the regulation of lobbying by law and the frequent introduction of bills and resolutions in Congress for that purpose, no law has yet been passed. There is never sufficient agreement on what should be forbidden and what should be permitted and, significantly enough, none of the bills introduced has contained effective provisions for enforcement.

During the last forty years, there have been marked developments in the technique of the pressure groups. Much less is heard nowadays of corruption and backstairs intrigue and much more emphasis is placed on education whether it be of Congress, civil servants, or general public. Lobbying has become more respectable, its relation to the complex functions of government is better understood, and its operations are increasingly conducted in the open. Those who believe in publicity as an important instrument of control in a democracy may take heart from these changes.

PRESSURE GROUPS IN BRITAIN¹

In Britain, there are hundreds of organized interests taking the form of business, labour, professional, agricultural, reform, philanthropic, and other associations. In the range of interests thus served, if not in total numbers of organizations, the British phenomenon is comparable to that of the United States. On the economic side alone, there are hundreds of associations representing commercial, manufacturing, transport, shipping, agricultural, mining, and financial interests. Most of these are in turn linked together in a few great national federations like the Federation of British Industries, the Association of British Chambers of Commerce, and the National Farmers' Union. The numerous labour unions have a common organ in the National Council of the Trades Union Congress.

No one of these large federations speaks with a single voice except on a few matters of broad general concern. On many if not most specific issues, the associations in a particular federation will speak discordantly. Professional and philanthropic interests are highly organized often with national headquarters established close to the government departments in Whitehall and to Parliament at Westminster. Their purpose in every case is to advance the interests of their members and this generally involves the securing of legislative favours. As we shall see in Chapter XIV, the numerous associations of municipal governments and mu-

¹This account of pressure groups in Britain is largely drawn from W. I Jennings, *Parliament*, Ch VII (Cambridge, 1939)

nicipal government officials are among the most effective pressure groups in Britain.

For reasons already discussed, the working of party government with the cabinet in the driver's seat defeats attempts by interest groups to influence policy through winning over individual members of Parliament. The interests do on occasion try to influence the choice of candidates in particular constituencies and to exact pledges from candidates by promising support or threatening opposition. Generally speaking, they cannot influence the choice of candidates because the local party associations know they must choose good party men. The candidate must resist all pressure groups who would bind him to action contrary to the party line. So he refuses to give pledges. In Parliament, members almost always vote with their party. The interests cannot break its grip nor are they allowed to appear before parliamentary committees to press their views.

The interests therefore must work within and through the parties instead of outside and against them. While many groups remain outwardly non-partisan, some associate themselves directly with one or other party. The trade unions led the van in forming the Labour party and still form its main strength. The bulk of the election expenses of Labour candidates are provided by the trade unions associated in the Trades Union Congress. The National Farmers' Union gives a measure of support to the Conservative party. The President of the Union not only was himself chosen and elected as a Conservative candidate in 1935, but was also a member of a standing committee which later examined and reported favourably on a bill to assist the livestock industry. The commercial and industrial groups are generally sympathetic to the Conservative or waning Liberal rather than to the Labour party and they often endorse candidates. Among the professional associations the National Union of Teachers and the British Medical Association, for example, pledge support of one or more candidates sympathetic to them but they are strictly non-partisan.

The mere fact that an interest group manages to smuggle a number of its sympathizers into Parliament under the cloak

of one or other of the parties does not ensure it any great influence. Private members, standing alone, are quite insignificant as the time afforded and the treatment given to private members' bills clearly shows. Most of the legislation sought by interests involves the expenditure of money and private members cannot introduce it at all. If a private member's bill is unopposed in the House, as bills sponsored by the Royal Society for Prevention of Cruelty to Animals generally are, it may go through easily. But most private members' bills meet opposition which means they must be debated. The time allotted for such debates is so short that only a few private members' bills ever reach the discussion stage. Finally, the cabinet has to be persuaded; the civil servants on whom the cabinet relies have to be convinced. Consequently, it is something of an occasion when a private member's bill actually becomes law.

The interests seek to introduce bills through private members mainly for the purpose of getting publicity and building up an agitation which will persuade the government to act. They know they must persuade the cabinet. They also know that the cabinet is extremely susceptible to the temper of public opinion and of opinion in the House. So they supply members of the House with their literature and encourage their sympathizers in the House to proselytize and to initiate questions and debates bearing on the claims of the group.

This indirect pressure on the cabinet is not the most important activity of interest groups. All the great organized interests are also in close and almost continuous contact with particular ministers and with the cabinet, presenting their facts and urging their point of view. They often appoint a committee to make direct representations to the cabinet or to a particular department of the government. They watch all legislative proposals, and before a bill adverse to their interests goes to Parliament they make strong representations against it to the cabinet.

The cabinet, to ensure itself as much as possible against opposition in the House, generally consults all the organized interests concerned while the bill is being drafted. Represen-

tations are heard on both sides, the criticisms made are subjected to examination by experts, and adjustments and concessions are made by the cabinet as far as it finds it possible to do so. After the legislation is enacted, the interests are generally represented on an advisory committee which is associated with the government department administering the legislation. The committee makes suggestions and criticisms which often lead to substantial amendment of the legislation at a later date. The picture of the cabinet as a dictator thus requires even more qualification than earlier discussion indicated. It is continually mediating between a great range of interests, each of which claims to be representative of the public interest. It tries to find accommodations which are acceptable or tolerable to the interests concerned and which still enable it to carry out the pledges of the party.

When extremely contentious issues arise on which the government wants a fuller knowledge of facts before committing itself, a royal commission of inquiry, to which a number of persons who know and can speak for the major affected interests are appointed, is often set up. These bodies perform a function somewhat similar to that of congressional committees in the United States when they afford public hearings for the various interests on some legislative proposal. If the commission can produce a unanimous report, the government has some ground for hoping that the interest groups will accept its proposals.

In any case, the interests are again consulted by the government before the government frames its bill on the recommendations of the commission. For example, the Minister of Transport submitted the Report of the Royal Commission on Transport of 1931 for comment and criticism to five associations of local governments, fifteen transport associations, four motoring associations, the Association of British Chambers of Commerce, the National Federation of Iron and Steel Manufacturers, and others. These interests could not agree. The road transport associations and railway companies took positions which were far apart. The Minister was not yet prepared to state a policy of his

own for action by the cabinet and Parliament. He called a conference of representatives of the interests in conflict which did produce an agreed scheme although the road transport associations still refused to accept it. In the end, the Road and Rail Traffic Bill produced by the government diverged somewhat from the recommendations of the Commission and also from the proposal of the conference. This illustrates the kind of negotiation which generally precedes the introduction of complex and controversial legislation into the House of Commons.

Important though organized interests are in the initiation of legislative proposals, their importance as critics of such proposals is even greater. As soon as a bill is published, the cabinet and the appropriate government departments get representations from all the interests which conceive themselves to be affected. It is often impossible to consult all interests before a bill is drafted. Those which were not consulted, and those which were but are still dissatisfied, urge their views as strongly as they can. If representations to the government are not effective, the interests then circularize the members of Parliament and get sympathetic members to urge their friends to protest. If the issue is one on which a general public opinion might be raised, that too is tried. A combination of these tactics is sometimes effective. To take only recent instances, the Incitement to Disaffection Bill, 1934, and the Population Bill, 1937, were sharply altered by the government, and the Coal Mines Bill, 1936, and certain financial proposals of 1937 relating to rearmament were dropped, because of widespread dissatisfaction which the organized interests had a part in fostering. The objective of interest groups in Britain is always to convince the cabinet or the department concerned that proposed legislation should be passed, amended, or rejected. They have a large share in shaping legislation although it is not as important a share as in the United States and is achieved by different means.

PRESSURE GROUPS IN CANADA

In Canada, the organized interests follow the pattern of the United States and Britain but are much fewer in number.

Of the economic interest groups, the Canadian Federation of Agriculture is the most highly organized and most cohesive. It speaks generally for the farmer and represents most branches of agriculture. The Canadian Manufacturers' Association (representative of the manufacturing interest only) and the Canadian Chamber of Commerce (representative of trade and industry generally) are both highly organized but they are both federations of such a variety of associations that they do not often agree on concrete measures. Organized labour is split into several groups, some of them purely Canadian, others affiliated with American unions. The Canadian Trades and Labour Congress comes closest to speaking generally for labour but it by no means speaks for all labour unions. All the well-established trades and industries have their own associations. Professional, reform, and philanthropic organizations also flourish.

As in Britain, the aim of pressure groups is to persuade the government but their tactics are not always identical. They rarely try to meddle directly in federal elections. Canada has so many constituencies, and even large regions, where one industry is so overwhelmingly predominant that the elected member, whoever he is or whatever party he adheres to, has no choice but to represent a particular interest. Almost every member from the Prairie Provinces, for example, is necessarily a spokesman for agriculture. Then, too, party discipline is not as strict as in Britain. As a result of these two facts, the important interests can generally find a group of members sympathetic to their point of view on issues which come up. They try to create opinion in the House and in the country by publicity, but lavishly financed propaganda is not common.

The principal reliance of the interest groups is on direct contact with the government. Some of the highly organized groups have their headquarters in Ottawa but many have not and they rely instead on the sending of occasional deputations or on securing the services of a parliamentary agent. There can scarcely be said to be permanent lobbies in Ottawa such as are found in Washington. The pressure

of interest groups on the Dominion government is sporadic rather than continuous making itself felt only as particular issues arise. Of course, they keep in touch with sympathetic members of Parliament and with ministers and permanent senior officials, supplying them with information on request. The Canadian Federation of Agriculture, for example, keeps members of Parliament informed of its views and has a strong influence on those representing agricultural constituencies, but it does not threaten them with defeat at the next election or attempt to organize a farm bloc in the House of Commons. It carries great weight with the Department of Agriculture acting in an advisory capacity to it but its influence on the policy of the Department is mainly indirect through the furnishing of information. Active pressure is applied by it and other groups when particular questions of policy come up, as when the customs tariff is to be revised.

The relatively lighter and more intermittent pressure of Canadian interest groups on the Dominion government is not due to the self-restraint of these groups. It is primarily due to the fact that the Dominion government, apart from the emergency of war, has not engaged in nearly as wide a range of activities as the British, or the United States federal, government. It has already been noted that the expansion of government functions is not as great in Canada as in Britain and the United States, and, of those functions undertaken in Canada, a very high proportion are carried out by the provincial governments on their own responsibility. In the United States, the states also perform many functions but there has been more centralization at Washington than at Ottawa. Consequently, the Dominion acts in a narrower field; the laws it makes and administers touch fewer interests and its impact on those it does touch is not as pervasive and continuous. The pressure of interest groups on the government varies directly with the scope and intensity of governmental activities. Most of the organized interests have only occasional business with the Dominion government and therefore do not find it necessary to maintain permanent offices in Ottawa.

Also, because the Canadian bureaucracy is relatively small and not excessively complicated, it is easy for outsiders to find their way around. Government officials and even ministers are more accessible than in London or Washington. Interest groups can send a representative or a deputation and reach the persons they want to see without the aid of professional guides and intermediaries. Thus there are not more than a dozen professional parliamentary agents in Ottawa and although they have a considerable clientele they are not highly successful in negotiating favours. In addition to these methods, representations may be made to the government and pressure applied to members of Parliament by inspiring numerous letters and telegrams complaining about one course of action or urging another.

When contentious measures are under consideration, the government consults with the organized interests affected and this consultation takes much the same form as in Britain. In one respect, it goes further enabling interest groups to appear before and give evidence to parliamentary committees. The Dominion civil service is not as well supplied with experts in all fields as is the British civil service and consequently more reliance has to be put on the information gathered from the organized interest groups. On highly controversial issues, a royal commission of inquiry is often appointed to inquire into the facts and make recommendations.

In Canada, as in Britain and the United States, the interests seek to be heard, not only on what laws should be made, but also on how the laws should be administered and enforced. In fact, as will be shown in detail later, they are as closely connected with the process of administration as with law-making. The various interests which make up modern society have found means of access to government which ensure that their knowledge, experience, and point of view will not be overlooked. The arguments for proportional and occupational representation have largely been met in these countries by arrangements which, although by no means free of abuses, are less dangerous to democratic institutions. It should also be clear that the present-day phenomenon of

assertive pressure groups arises from the wide range of governmental functions and that it is only in this context that the significance of lobbying and kindred practices can be appreciated. Unless one considers in detail the impact which governmental action makes on the interest groups, one's opinion that lobbying should be abolished, reformed, or regulated, is worth little.

CHAPTER IX

THE RELATIONSHIP BETWEEN THE EXECUTIVE AND THE LEGISLATURE

THE legislative and executive organs have been described and their distinct functions have been outlined. The legislature makes the laws, levies taxation, appropriates public revenues for the executive to spend and keeps some check on the activities of the executive. The executive cannot pursue any course of action affecting the rights of citizens except as authorized by law to do so. The legislature sets the tasks of the executive and is thus superior to it even where the rigid separation of powers makes them co-ordinate organs. The executive runs the household economy of the government, carries out the laws, and supplies the services authorized by legislation.

As we have already seen, however, this is an over-simplification. Many of the objects and purposes pursued by governments today are not accomplished merely by making laws. A law and an appropriation of public revenue to the purpose is essential, but the vigour of administration by the executive sets the measure of success. Much legislation in the positive state is to no purpose unless the legislature can transmit to the executive the impulse which put the law on the statute-book. The executive, in turn, often finds that laws cannot be made to work with the best economy of effort, or at all, unless they are amended, and the executive must be able to transmit its experience in administration to the legislature. Indeed, the question whether a particular law is workable, or even desirable, may turn on the data and experience accumulated by the executive in trying to enforce it.

As we shall see later, there is even ground for saying that the making of laws and the administration or enforcement of them are not two distinct processes. Most laws enacted nowadays are attempts to correct some social abuse or to

ease the tension owing to some conflict of interests. The legislature never knows all the factors involved. It is clear that something should be done but it is not clear what or how. Accordingly, it often legislates in vague general terms instructing the executive to exercise a discretion and experiment with possible solutions. The executive makes detailed rules and regulations which are law tentatively, to be modified and recast in the light of the results. War-time legislation affords the clearest example. The law of price control in Canada was not made full-fledged at the time when the fixing of prices was introduced in 1941. Something had to be done. It was not clear what should or could be done and the general policy was launched with much fear and trembling. The law of price control was developed and refined in great detail in a continuous stream of rules, amendments, and interpretative orders as experience suggested or compelled. That is to say, the law was being made while it was being administered and enforced, and it was being administered while it was being made. The same is true of much of the legislation of the past forty years.

Of course, it was never possible to separate completely the legislature and executive and it was never attempted. Today, the scale and importance of governmental action make it imperative to have a very considerable degree of co-ordination between the two organs. It is not enough that they should check one another; everyone expects them to work together as a team to promote the good life. Therefore, the working relationships between them are an important subject of inquiry. The relationships in Britain and the United States are in marked contrast. An examination of the contrast should illuminate the much-debated question of the merits and demerits of presidential and parliamentary systems of government and give some insight into the workings of democratic government. In broad essentials, the Canadian follows the British system and it will be sufficient to indicate significant variations from time to time.

LEGISLATURE AND EXECUTIVE IN BRITAIN

The British legislature and executive are not separated but almost entirely fused. The cabinet as a committee of the legislature links the administration to the legislature. The impulses which move the legislature move the executive also, and the information and experience gained in administration are readily available to the legislature in its deliberations on policy. This fusion might not be particularly significant if it were not for the fact that both legislature and executive are in the grip of the same political party. Without party control, the executive committee of the House of Commons might be of one view while the majority of the members took another view; or more likely, there would be several factions differing in opinion with the cabinet and among themselves. In reality, it is the party which links the executive and legislature. The Prime Minister and his colleagues in the cabinet are the leaders of the majority party in the House of Commons. As we have seen, these leaders have already gained, through the party councils, party adherence to a platform which they themselves had a very large share in making. They come to the House of Commons with a programme, a disciplined majority to support it, and a mandate from the electorate to use the majority to push the programme.

At bottom, however, parties in a democracy are unstable combinations and the concurrence of a majority with the cabinet would often be uncertain were it not for the power of dissolution. The Prime Minister has the right to ask the King for a dissolution of Parliament at any time and it is only under extraordinary circumstances, if at all, that the King would be constitutionally justified in refusing it. Members of Parliament do not want to face the election which follows a dissolution because it is expensive, makes heavy demands on energy and is uncertain in result. The weapon of dissolution is rarely used because the fact of its existence generally holds the waverers in line. As long as the political situation gives one party a clear majority in the House of Commons, Parliament lives out the greater part

of its allotted span of five years and during that period the party programme is steadily pushed forward under the leadership of the cabinet.

The cabinet monopolizes the drafting of legislation, bringing to the task all the information, experience, and expertness of the civil service. Subject to minor qualifications, the cabinet gets what legislation it wants from Parliament and prevents the enactment of laws it does not want. Thus the cabinet is prepared to enforce vigorously all the laws enacted. The fact that a single body, the cabinet, moulds the legislative programme ensures at least a minimum of coherence and unity in that programme so that the administrators are not called on to enforce measures which are contradictory or inconsistent with each other. In so far as modern legislation and administration are inseparable, the British system of government is admirably adjusted to meet the situation.

However, British government is no longer parliamentary government in the classic sense. Seventy-five years ago, the cabinet was continuously dependent on the will of the legislature which might be asserted against it at any time. The power of the legislature to deny support to the cabinet and the power of the cabinet to dissolve the legislature maintained a balance in which direct responsibility of the executive to the legislature was assured and frivolous obstruction and irresponsible self-assertion by the legislature was prevented. Both legislature and executive were compelled to estimate closely the temper of the electorate. If the executive found itself hampered by attitudes in the House of Commons which it thought would not get support from the electorate, it would demand a dissolution. If the executive took a line which the House thought the electorate would reject, it would challenge the executive. Government in close correspondence with electoral opinion was assured. Also, predominance in government went to the body best able to estimate electoral opinion. In the absence of strong central party organization to keep it informed, a dozen or so men in the cabinet could not hope to guess as accurately at electoral

opinion as could the House of Commons. Government therefore was parliamentary government.

With the extensions of the franchise, electoral opinion became harder to estimate and easier to mould. Central party organization was developed both to mould and estimate opinion. With its emergence, the leaders of the majority party, who either are in the cabinet or work closely with it, ceased to be inferior to the House of Commons in their guesses at public opinion. At the same time, the central party organizations reached out to influence the choice of candidates and the content of the party programme, and to associate candidates and programme with the party leadership until elections came to be primarily contests between the party leaders. There is no great exaggeration in saying that the prime minister is elected by the people and given a popular mandate to carry out the announced policy of the party. At least, the cabinet now has direct relations with the electorate and is not merely a committee of the House of Commons.

In these circumstances, the House of Commons inevitably lost its pre-eminence and British government became party government. In this view of the matter, it has been suggested that the Parliament Act of 1911 which stripped the House of Lords of its powers was not so much a victory of the House of Commons over the House of Lords as it was the final triumph of party government over parliamentary government. The last obstacle to control of Parliament by the parties was removed. In the last fifty years, only two governments have fallen through a vote of lack of confidence and neither of these had the support of a single party with an overall majority in the House of Commons.

Those who focus attention solely on events in the House of Commons see a disciplined party majority invariably supporting the proposals of the cabinet and conclude that Britain has been governed for half a century or more by a series of four-year cabinet dictatorships. The average member has lost his independence and his influence on legislation and he is grimly compelled to vote the party line on most occasions. Some even argue that the House of Commons is fast becoming, as the Crown and the House of Lords have

already become, a dignified rather than an efficient part of the British constitution.

CABINET DICTATORSHIP IN BRITAIN

If we keep in mind some salient points of the preceding chapters, we can make some estimate of this charge of cabinet dictatorship. The executive is the one indispensable element of any government. The more things a government is expected to do, the more important executive leadership becomes and the widespread activities of present-day governments have everywhere aggrandized the executive. If a government is to be democratic, political parties must organize majorities and find the policies which majorities will support. The party with the majority must rule and the legislature must register its decisions as long as it holds a majority. Any organization as large in number and as complex in function as a political party becomes a prey to oligarchical tendencies and the leaders of the party are the active deciding element in many issues. When the party wins power in an election, the party leadership makes or becomes the cabinet. The executive is undoubtedly the mainspring of the British system of government.

To estimate whether the cabinet exercises a dictatorship during its period of office, one must look beyond the House of Commons to see who rules the ruling party. The discussion in an earlier chapter indicates that this is not an easy question to answer. The central organization and the parliamentary leadership of the party have enormous leverage on the party. On many matters, they have their way either because the rank and file of the party supporters do not know what is involved or cannot agree on instructions to the leadership. This is far from saying that the leaders can do what they like with impunity. There are always rival would-be leaders in the party who will swim into prominence and power on any strong current of opinion in the party if the present leaders do not canalize that current by making accommodations for it. Even if they are adept at heading off revolts among the rival would-be party leaders, they always face the danger that disgruntled elements of their popular

support, unable to get concessions to their point of view, will transfer their allegiance to the opposition imperilling their party's chances in the next election.

That is to say, the power of the party leaders, although it is impressive at a given moment when the party line has been settled and always effective against individual malcontents, is always contingent on them holding the leadership of the party and securing a majority for the party at the next election. They are therefore responsive to all pronounced trends of opinion in the party or in the electorate; anxious, indeed, to anticipate them. The ease or difficulty with which they hold majority support in the House of Commons is the measure of their success. The fact that the party majority always supports the cabinet may not mean anything more than that the cabinet has correctly interpreted the will of that majority.

Moreover, the necessity of running the gauntlet of debate and criticism in the House of Commons always disposes the cabinet to caution and moderation. It is not repeated trials of strength between the horse and the fence which keep the horse in the pasture but the facts that the fence is there and the horse knows it. The opposition as well as the party majority in the House has an influence over the cabinet which cannot be measured by counting the number of collisions between the cabinet and the House. No simple *cliché* suffices to describe the power of the cabinet over Parliament.

Party government in Britain has ensured the co-ordination of legislature and executive necessary to meet the demands of present-day governmental activities. It enables the legislature to enact, and the executive to administer effectively, complicated and far-reaching measures of social and economic adjustment. It is the only method thus far discovered for combining strong vigorous government with democratic control. Of course, it has its inevitable costs and these may become so high as to bankrupt democracy. The consistency and coherence of its public policy for which the system is praised involves uniformity of treatment which cannot take sufficient account of special needs and special circumstances. For example, the British government did not respond

effectively to the needs of the depressed industrial areas of the country in the nineteen-twenties. The individual members of Parliament for the depressed areas could not escape party discipline to combine for special concessions to their constituencies. It may be inevitable but it is not an unmixed good to have the policy of the country framed in party councils rather than in Parliament. Among other things, it unfortunately reduces the prestige of Parliament in the eyes of the country. Other disadvantages will be considered later.

The most serious danger does not arise from the fusion of executive and legislature but from the fact that it becomes increasingly difficult for the electorate, the rank and file of the party, and even for members of Parliament, to understand what is involved in the policies which the party leadership works out in conjunction with the numerous experts in the civil service. This difficulty, however, arises out of the demands for governmental action rather than out of the form of political organization.

LEGISLATURE AND EXECUTIVE IN THE UNITED STATES

In the United States, the executive and legislature are sharply separated. Neither the President nor any member of his cabinet can sit in the legislature. The legislature is cut off from any direct access to the information and experience which the executive accumulates and the executive cannot participate directly in the framing and pushing of legislation. The terms of office of each are fixed by the constitution and cannot be cut short by any ordinary exigency of politics. The legislature therefore cannot bring the executive to terms by the threat of a vote of lack of confidence. It has to work indirectly through setting up committees of investigation to harry the administration, through senatorial refusal to confirm presidential appointments, or through enactment of laws in such detail that they confine the executive to exactly prescribed tasks. The executive cannot persuade the legislature to come round to its view, or half-way to that point, by threatening dissolution. It has, of course, a veto power to prevent any legislation which cannot summon a two-thirds majority in Congress, and the President

can always get some leverage on Congress in his first year of office by delaying patronage appointments. None of these threats, however, can be of more than occasional use in special circumstances.

The formal constitutional relationships work against rather than for the co-ordination which has been premised as necessary. The President who gets some kind of an overall view from the information flowing to his desk from the administration and from the country cannot help trying to give a lead in legislation and as usual, the efforts of one or a few to tell the many what to do cause almost continual tension between him and Congress. It is only in great emergencies like war or depression that the executive manages to get the legislative leadership which the British cabinet normally enjoys. The leadership exercised by Abraham Lincoln, Theodore Roosevelt, Woodrow Wilson, and Franklin Roosevelt is explained by the crises associated with their rule and there are other instances of less dramatic interest.

In fact, the federal government has oscillated between presidential leadership and congressional leadership with such regularity as to prompt the suggestion that this oscillation rather than rule by alternating political parties is the striking feature of American politics. When Congress leads, it does not lead vigorously in any particular direction but gives itself over to the play of sectional, local, and group interests. The country tires of the bickering and of the combinations of selfish interests which get their way in Congress. When a crisis looms, attributable sometimes in part to the lack of political leadership, a President comes to power with a popular mandate for action. With this popular support, an astute President can for a time master the diverse forces in Congress and push a legislative programme like the New Deal, unified in purpose if not in all its concrete detail.

But in the past, at any rate, these periods of effective legislative-executive co-ordination have been short. Many sectional and group interests are inevitably alienated or disappointed, the mood for united action and concentrated leadership passes, and the President's pre-eminence vanishes. At the next election, the country chooses, almost deliberately

it would appear, a chief executive who is unfitted by ability and temperament for vigorous leadership. One trend, however, is discernible in these oscillations. The executive grows steadily in functions and importance and the authority of the President, when it declines, never falls back to the previous low point.

Most of the time, Congress leads and its leadership is divided among the congressional committees. Chairmanship of these committees, it will be recalled, goes by seniority to those with the longest continuous service in Congress. The men who are continually returned to Congress generally come from safe constituencies where opinion changes slowly, where common sectional or local interests return the same champion again and again. Thus the most powerful men in Congress are often representative of "backwater" areas of the community little stirred by changing currents of opinion in the nation as a whole. In these circumstances, there is no unified national leadership, and party discipline, while it keeps business moving through Congress, has little effect on the content of that business.

Lobbies and sectional interests launch bills in committee and work up combinations, which generally do not follow party lines, to support them. In the securing of appropriations to be spent for local amenities in the constituencies, members of Congress co-operate in supporting each other just as the pioneer settlers assisted one another in rolling up logs for buildings, or to be burnt. Log-rolling, also known as broaching the pork-barrel, is always a prominent feature of congressional leadership in financial and other legislation.

The President, elected by the country as a whole and representing the nation, tries to rally his party in Congress against this kind of legislation and may check the more cynical bargains by his veto. He cannot always prevent the enactment of legislation he dislikes and often cannot get support for legislation he thinks desirable. He may even be required to administer legislation which cannot be made effective because administrative experience and data were ignored in the framing of it. Congress at times acts irresponsibly, yielding to pressures and enacting legislation it

does not genuinely believe in and counting on the President to take the odium of vetoing it. The worst situations, of course, develop when the President is of one party and the majority in Congress of another. But even when the President's party is in a majority, it often turns out either that the leaders of that majority in Congress are not in sympathy with him or they cannot control their followers.

This suggests what has already been asserted about the British system. It is not so much the formal constitutional relationship of the legislature and the executive as the character of the party system which determines the real relationship. As already explained elsewhere, the national political parties in the United States are not disciplined parties with a centralized leadership. The party platform is a collection of vague resolutions which does not lay down a clear-cut party policy. The national central party organization is a temporary committee for fighting elections every four years and not for maintaining disciplined party support of a programme between elections. Unlike the British central party organizations, it cannot veto the nomination of particular persons as party candidates in the constituencies. Attempts by the President, as the leader of his national party, to influence nominations have always failed. Thus the choice of candidates is dictated by local and sectional considerations which ensure that those elected to Congress will reflect local and sectional interests and will be dependent on these interests for re-election.

To put it concisely, the national parties are loose federations of state parties which lack unity of purpose. They never have clear-cut programmes and, without such a programme and a mandate from the electorate to enforce it, there is no strong urge for rigid party discipline. In times of crisis, a President may come to office, as President Roosevelt did in 1933, with a mandate from the nation. His ability to execute it comes more from his appeal to the nation over the heads of Congress than from the disciplined support of his party in Congress. Even if the executive were fused with, and given power to dissolve, the legislature as in Britain, executive dominance of the legislature would not necessarily

result. It would only result if the sectional diversities of the United States were overcome in unified national parties.

LEGISLATURE AND EXECUTIVE IN CANADA

The formal relationship of the executive and the legislature in Canada is the same as in Britain. Superficially, the results are the same. The cabinet commands the attention and directs the time and energies of the House of Commons. It prepares the legislative programme and can count with confidence on the support of its majority in the House to carry it through. It uses the threat of dissolution to keep this majority in line. Bitter complaints about cabinet dictatorship and the lack of independence of the private member are commonly heard. Close examination, however, would reveal that party discipline is not as tight as in Britain. Assertions of independence are not as rare because the consequences of revolt are not as disastrous. The member who refuses to obey the party whips may lose the federal patronage and be denied federal funds in the next election but, if he maintains his hold on his constituency, the central organization of his party cannot prevent his renomination at the next election. Also, the Canadian cabinet, more often than the British, finds it expedient to modify or withdraw particular items of its legislative programme as a result of the pressures which play upon it.

These differences are slight and not of great significance in themselves. If attention is focused solely on events in the House of Commons, party discipline seems to be highly effective. The really important difference is in the content of the programme which party discipline carries faithfully to the statute-book. There is no need to emphasize the vague ambiguity which marks most of the items in the programme of the national parties. In this respect, they closely resemble the platforms of the national parties in the United States, being framed to appeal to several of the diverse sections of the country. Vague in programme and weak in mandate, the Dominion government, except in the crisis of a great war, is vacillating and temporizing, not given to vigorous measures. Even the great depression of the nineteen-thirties did not

bring a government or a policy comparable to the Roosevelt Administration and the New Deal in the United States. The executive commands the legislature but rarely forces it to drastic measures or bulky accomplishment in legislation.

Here again the reason lies in the nature of the national political parties. They too are loose federations of provincial parties and the forcing of a vigorous policy by the executive would threaten the tenuous unity of its majority. The individual member of Parliament, generally resident in the province, if not in the constituency, he represents, has a local backing which diminishes his dependence on the national party organization and leadership. His political career is not necessarily ended if he should resist the party line at Ottawa. He may have valuable connections with the autonomous organization of his party in his own province. Since this is generally true of all members of Parliament, the leaders of the national parties know better than to try to enforce the comprehensive discipline which grips British parties. Members of Parliament can be held in line in Britain because their personal connection with their constituencies is often slight and if they are repudiated by the central organization and leadership, their career in that party, at least, is likely to be ended.

In fact, the federal cabinet in Canada does not need a very comprehensive discipline because the positive measures to which the generalities of the party platform commit them are fewer and less drastic than those which British parties undertake. Moreover, the cabinet is not inherently disposed to single-minded aggrandizement of national leadership. They too, as we have seen, are ambassadors of provinces and sections, imposing reservations on national policy, as well as national leaders. They get the disciplined support of their party in the House of Commons because they do not ask too much. They get disciplined support because the executive and legislature are fused as in Britain and they do not ask too much because the federal political parties are loose federations of provincial parties as in the United States.

In concrete terms, the relationship of the executive and the legislature is best illustrated by the case of financial

legislation. He who controls the purse occupies a key position in government as in other activities. The control of taxation and public expenditure is of high importance for constitutional government and on this ground too, financial legislation deserves separate examination. A government which is required to act in accordance with law must secure specific laws to justify its imposition of taxes and its expenditure of public revenues.

FINANCIAL LEGISLATION IN BRITAIN

A standing order of the British House of Commons provides that all estimates, i.e., proposals for expenditure of public money, must come from the executive and from it alone. The budget is thus necessarily prepared by the executive. In practice, it is prepared by the Treasury, as the department of finance is called. By a process of close consultation between officials of the Treasury and of other departments, a draft of the annual estimates is worked out and submitted to the Treasury several months in advance of the beginning of the next fiscal year.

The Treasury requires every increase in the estimates of a department to be supported by detailed explanation. As the Chancellor of the Exchequer, the member of the cabinet responsible for finance, must bear the odium of proposing additional taxation, the Treasury is the one department of government unflaggingly devoted to economy. Its attitude towards the estimates submitted by the other departments depends on its forecast of next year's revenues and on the general policy of the government towards increase or decrease of taxation. In any event, the other departments of the government must justify their estimates to a vigilant Treasury which may veto any item or insist on a general reduction. A department which thinks it has a grievance may appeal to the Prime Minister or to the cabinet as a whole. Generally speaking, however, the Treasury has the last word on the content of the estimates submitted to Parliament.

Meanwhile, the revenue proposals which are justified or dictated by the estimates are worked out by the Treasury

and, after cabinet approval of them, the Chancellor of the Exchequer presents his budget containing both estimates and revenue proposals to the House. These financial proposals are considered by committee of the whole in such detail as the twenty days allotted for such discussion permits. In practice, the time is taken up in discussing a few groups of expenditures, or "votes," and the others are rushed through with little or no consideration. Millions upon millions of pounds are always voted in haste at the very end. A private member may not move an increase or a shift in the destination of an item in the estimates because that would violate the standing order referred to. He may move that particular items be decreased or entirely disallowed. However, except in very trivial matters, the cabinet regards such a motion as one of want of confidence in the government and party discipline ensures its defeat. Pressure may persuade the government to modify its financial proposals but it is now unknown for the House openly to force a revision.

The House of Commons accepts these proposals as reported to it by committee of the whole, the House of Lords has no power in money matters, and therefore, almost invariably, the estimates emerge from Parliament in an Appropriation Act, and the revenue proposals in a Finance Act—true copies of the original proposals of the Chancellor of the Exchequer. The most striking indication of the general expectation that the cabinet will carry its financial proposals unchanged is the law enacted in 1913 providing that changes in taxation proposed in the budget speech shall come into effect on the following day.

The system enables the executive, which alone knows in full detail the activities and needs of the various departments of government and the probable yield of the sources of revenue, to draft the financial legislation. It ensures unified responsibility for public expenditure. The appropriations are not arrived at by pooling the diverse and unrelated preferences of individual members of Parliament. The executive does not have to countenance raids on the treasury by blocs of members in order to get support for its main proposals. It surveys the entire field of proposed expendi-

tures and enforces a coherent programme. It is unlikely, for example, to appropriate funds for the draining of swamps in aid of agriculture and, at the same time, to authorize expenditures on restoration of swamps for the protection of wild life. The expeditious enactment of financial legislation is also assured.

It is often said that the Chancellor of the Exchequer is the financial boss in Britain. There is much exaggeration in this view. Despite his strong bias for economy, public expenditures have risen sharply and steadily for the past fifty years. The reasons for this are clear and they operate in United States and Canada as well. The permanent officials in the other departments always see reasons for expanding their activities and extending their establishment. The balance of electoral demand comes down on the side of more government services. The members of Parliament would like to make the best of both worlds and cut taxes while raising expenditures. Since they cannot, they generally acquiesce in or plump for the latter. The serious thing about cabinet control of finance from their point of view is not their inability to reduce estimates but their inability to raise them. The cabinet as a whole responds to these inclinations, and the Chancellor of the Exchequer is always fighting a rear-guard action on expenditures.

It is, however, a resolute rearguard action. Incautious department heads who advance inadequately supported or extravagant proposals get badly mauled. To use another figure, the Treasury is the watchdog of the public purse. Within the lines of policy laid down by Parliament, it enforces strict economy and supervises the household operations of the various departments in aid of efficiency. In this limited sphere, the Chancellor of the Exchequer may be said to be a financial boss. As Parliament does not examine the estimates in detail, it is necessarily done by an executive agency.

When it comes to the expenditure of the money voted by Parliament, the Treasury, through an accounting officer in each department, sees to it that the money is spent on the purposes for which it was voted. However, Treasury control is not regarded as a sufficient guarantee of probity in such

matters. The Comptroller and Auditor-General, appointed by the executive but enjoying the same independence and tenure of office as a judge, audits all the government accounts, reporting irregularities to the Treasury. The most important of his duties is to make an annual report to Parliament. This report is a guide to an active select committee of the House of Commons, the committee of public accounts, which examines and reports to the House on financial irregularities. It is a small committee of fifteen members with a chairman and a majority of its members drawn from the opposition. It probes vigorously in the public accounts and the government departments take great pains not to incur its censure. It is a very effective instrument for legislative surveillance of the executive.

FINANCIAL LEGISLATION IN CANADA

Subject to minor variations in detail, the legislative-executive relationship in financial matters in the federal government in Canada follows closely the British pattern. In Canada, the Department of Finance and the Treasury Board carry out most of the functions of the British Treasury. The Treasury Board is a committee of the cabinet composed of the Minister of Finance and five other ministers who have a responsibility corresponding to that of the Chancellor of the Exchequer for settling the financial proposals, subject to the final approval of the cabinet. This responsibility is not concentrated on a single minister nor does the Department of Finance exercise such a searching supervision of the household economy of the spending departments as the Treasury in Britain. Also, the grip of the cabinet on all aspects of finance is not as strong as in Britain. Log-rolling behind the scenes often affects such matters as the revision of the customs tariff and the make-up of appropriations for federal expenditures in the local areas of the country.

One of the most marked differences is in the use made of the public accounts committee. As in Britain, the Auditor-General examines the public accounts and makes an annual report to Parliament. The public accounts committee of

the Canadian House of Commons has been moribund. In the ten years preceding the outbreak of World War II, it never met. It was active during the war but it remains to be seen whether this is temporary war service or not. The committee is too large, running to fifty members. The chairman and the majority of the members are supporters of the government in power and it is asserted that they are more concerned to obstruct than to assist investigation. Whatever may be the truth of this assertion, the only check a committee which does not sit has on the government is the fear that it may sit. This is not a negligible restraint but it is not nearly as effective as if the committee were constantly probing the accounts. Most of the variations from the British budgetary practice can be traced to differences in the party systems of the two countries.

The House of Lords in Britain has lost its power over financial legislation. The Canadian Senate has never had its wings clipped and it claims the power to amend or reject money bills passed by the House of Commons. The rules of the House of Commons declare that its grants of money are not alterable by the Senate. The only explicit constitutional provisions bearing on the dispute between the two Houses are section 53 of the British North America Act which provides that money bills shall originate in the House of Commons, and section 54 which, in effect, provides that the cabinet alone can propose appropriations and taxation. It is clear that the Senate cannot amend money bills so as to increase appropriations but its power to reduce or reject is open to dispute and depends on subtle interpretation of the unwritten portion of the Canadian constitution.

It is not necessary to go into the matter for two reasons. First, the Senate, as we have already seen, does not venture frequent or prolonged defiance of the House of Commons. It rarely insists on amending financial legislation, the last occasion being in 1925. In the railway building era, the Senate frequently rejected bills providing large appropriations for railways. These bills were one of the Canadian forms of log-rolling and it is doubtful whether the electorate would have supported the House of Commons if the House

had tried to make a political issue of the matter. This probably explains why the Senate has often made good its amendments and rejections of money bills in the past. The majority in the House of Commons acquiesced with bad grace in the particular case while denying vigorously the validity of the principle.

Secondly, as the British experience shows, the working of the cabinet system requires that the cabinet should be responsible to the lower House only. To try to make it responsible to two Houses which may be of opposite minds would destroy responsibility. The substance of policy often turns on getting a grant of public money to implement the policy. If the Senate intervened frequently and in detail in finance, it would force a showdown with the popularly elected House in which it would inevitably lose. Its claim to equal powers in finance has merely a nuisance value which can only be kept on foot if it is not pushed too hard.

FINANCIAL LEGISLATION IN THE UNITED STATES

The worst indictment of the separation of powers in the United States is based on the method of enacting financial legislation. Even those who generally approve the separation of powers are unhappy about its consequences in finance. Money bills must originate in the House of Representatives but aside from this unimportant provision, each House of Congress has a wide initiative in finance. Congress rather than the President determines the content of the budget.

Before 1921, there was not even the semblance of a unified budget. The government departments worked out their own estimates and the Secretary of the Treasury submitted them to the House of Representatives along with an estimate of tax revenues for the coming year. The House at once distributed the estimates to its various committees. In these committees, officials of the departments of government, interest groups, and the different sections and localities of the country all clamoured for appropriations. Each committee responded to these pressures and produced a set of appropriations for the sector of government activity with

which it was concerned. The budget as reported to the House by the several committees consisted of several unrelated proposals tied together in a bundle. A similar process went on in the committees of the Senate after the estimates were passed by the House. No single government department or legislative committee ever looked at the budget as a unified whole. Every department and every committee put in its separate demands without too much concern as to what the total was.

In 1921, an advance towards British budgetary practice was made. Legislation in that year provided for the establishment of an executive agency, the Bureau of the Budget, headed by a director appointed by the President and responsible to him alone. His functions resemble those of the Chancellor of the Exchequer, his bias being towards efficiency and economy in the public services. Working with departmental officials, the Bureau of the Budget goes carefully into the demands of the departments. The Director cuts and trims where he thinks fit and, subject to an appeal by the department to the President, he has the last word. The estimates, which then go forward to the House, are the amounts which the President and his advisers, on careful consideration, think necessary for the work of the executive. While the estimates are being prepared, the Bureau makes a forecast of the probable receipts from taxation and decides what modification of the taxation system, if any, should be recommended to Congress. When these estimates and calculations have been completed and drawn together in a budget, the President submits it to both Houses of Congress. The necessity, under present conditions, of executive drafting of financial legislation has been recognized.

Under the law of 1921, each House had to set up a committee on appropriations to which all estimates must go. The only committee which can propose appropriations to Congress is the House committee set up for that purpose. The budget goes first to this committee which, through its numerous sub-committees goes into the estimates in detail and hears officials and others who wish to support or oppose particular appropriations. So the estimates proposed for the

following year are surveyed and reported to the House—and to the Senate—as a whole, although, in practice, the appropriations for each department and agency of government are contained in a separate bill. If the totals favourably reported exceed the totals asked for by the President and covered by existing or proposed taxation, Congress is faced with the responsibility of levying more taxes or borrowing on the public credit, although it is said that there are Congressmen who never vote for a tax bill and never vote against an appropriation.

This is as far as the copying of British practice goes. The appropriations committee in each House will reduce some items and increase others. They may hamstring a particular branch of the administration by cutting its estimates sharply. Through the appropriate committees of Congress, legislation (inspired by congressional blocs and not by the President) requiring an appropriation of public money for its execution will emerge. In this way, large sums may be added to the total of the proposals of the executive. Pork is still distributed from the pork-barrel.

Nor are the modifications and additions at an end when the appropriation bills are reported to the House of Representatives. While the House seldom makes substantial changes in the appropriation bills as reported to it, these bills must still go through the Senate. The Senate committee on appropriations makes numerous changes. The only limitation on the Senate in money matters is that revenue measures cannot be introduced there, and even this limitation is often evaded. Government departments and interests which were disappointed by the action of the House committee often try their luck again before the Senate committee. Again, when the appropriation bills are reported to the Senate for action, individual Senators may force amendments, usually additions, by threatening a filibuster.

After the Senate has added its thoughts to the estimates, the bills go back to the House for its assent to the changes made by the Senate. If, as often happens, the House refuses to accept the amendments of the Senate, a conference committee of two Houses is appointed to find a compromise on

which both can agree. When it is found, the bills get their final readings in both Houses and are sent to the President to be signed.

Even in the periods of strong presidential leadership, the action of the legislature may seriously distort the budget as proposed by the President, both by reductions and additions. The appropriations for one of his cherished projects may be cut and his pledges of economy may be thwarted. He has the power of veto but Congress rarely gives him a chance to use it. Appropriations known to be obnoxious to him are attached to appropriation bills covering vitally important votes of money. As he cannot veto particular items in a bill but must accept it or reject it as a whole, he has little choice but to accept. The unified responsibility of the British system is still lacking.

The revenue side of the budget is similarly handled by the legislature. The proposals of the Bureau of the Budget go to the ways and means committee of the House and the finance committee of the Senate, both of which alter them as they see fit. Officials, representatives of the reluctant tax-payers and other interests are heard and tax bills drafted. Log-rolling and the push and pull of a great variety of interests are a marked feature of the framing of tax as well as appropriation measures.

They are found on a grand scale particularly in the revisions of the protective tariff which has always been a big revenue producer and the cause of unremitting struggle between the various sections and economic interests of the country. The main lines of tariff legislation are fixed by complex bargaining between agriculture, labour, and industry, and the detailed contents of the tariff schedules depend on log-rolling between the innumerable industrial and commercial interests, almost all of which want a tariff on some articles and none on others but do not agree at all on what these articles should be. The tariff is not a matter of party policy or executive leadership but of bargaining between a continental array of interests.

The President cannot depend on getting the kind of taxes he wants. Nor can he depend on getting tax measures

which will bring in the revenues he sees necessary to meet governmental expenditures. During World War II, for example, Congress repeatedly cut his tax recommendations to a fraction of his demand. Congress refused to face the unpopularity of telling the people that wars must be paid for. They seemed to prefer the impersonal method of inflation—which can be blamed, although wrongly, on the business interests which profit by it—to the direct method of taxation for which Congress would most certainly be blamed. The executive prepares the budget but it is Congress and not the President which dominates finance.

The law of 1921 setting up the Bureau of the Budget also provided for the office of Comptroller-General. This official is appointed by the President for a fifteen-year period and cannot be removed except by impeachment or by a joint resolution of both Houses of Congress. His functions are similar to those of the Comptroller and Auditor-General in Britain investigating and auditing all branches of the public accounts and reporting the results of his work to the President and to Congress. Congress, however, has not a standing committee on the public accounts, and investigations of executive stewardship are made, if at all, by special congressional committees of investigation appointed from time to time and not solely concerned with financial matters.

This account of the enactment of financial legislation points to the greatest weakness of American federal government for present-day purposes. In an age when governments are expected to enact and administer efficiently a great quantity of complicated and interrelated legislation of the highest importance, it is vital to be able to bring home responsibility for failure. The difficulty arises from the impossibility, already noted, of keeping present-day legislation and administration in separate compartments. The nation, which elects the President, tends to hold him responsible for failure but he generally lacks the power to carry his view of what ought to be done. Congress rarely thinks in terms of the whole programme but reacts for and against particular items of it under the stimulus of a great variety of conflicting pressures, intensified by a desire to assert itself against the

Administration. Even when it does think in terms of the whole, it lacks the information necessary for fully informed and wise decision and is, in any event, unable to ensure that administration will be carried on in accordance with its view. Moreover, the means through which the electorate could enforce responsibility on Congress are lacking. Party spirit does not dominate Congress; voting commonly does not follow party lines. The parties do not line up for and against an extensive programme in Congress and nothing therefore would be gained by trying to hold the parties responsible. Where disciplined parties inviting responsibility do not exist, the electorate cannot enforce responsibility. If they did exist, the formal separation of powers would not give any great trouble. The parties would see to it that President and Congress became a harmonious team.

Of course, the present situation is not without advantages. Any threat of executive dictatorship gets short shrift. Policy is not made in secret party councils but in Congress where the vital forces of the nation find free expression. Effective integration of policy is difficult, but then it is not as important in Washington—or Ottawa—as it is at Westminster. In Britain, there is no middle term between the national government and the municipalities. Whatever is demanded of government which cannot be done locally by the municipalities must be done by the national government which has had to respond to the full impact of the great expansion of government activities. In United States and Canada, the states and provinces stand as autonomous governments between the national and municipal governments. Much of what we demand of governments today is carried out by numerous state and provincial governments and, as long as it is done acceptably there, it does not require close integration and disciplined action at the national level. Because of the federal system, the national governments still retain some of the characteristics of an alliance between states for furthering a limited set of common interests. An alliance of states does not need, and no one expects it to have, the close-knit governmental organization necessary for a unitary state.

Much more will be said later about the significance of federalism. For the moment, it is sufficient to realize that federalism is an important factor in the workability of the legislative-executive relationship at Washington and that the future of that relationship is involved in the fate of federalism. If the states have to abdicate to the national government, the concentration of business in Washington will compel drastic revision of the institutions summarily described in this chapter. But as long as the states continue to carry a large part of the governmental load, arguments that the relationship of executive and legislature at Washington should be changed to secure the efficiency of the British system are not completely convincing.

CHAPTER X

THE JUDICIARY AND THE LAW

WE have discussed at some length legislative and executive organs and functions. Attention must now be turned to the judicial power, the third element in the three-fold classification. In comparing the judicial organs and their functions in the United States, Britain, and Canada, more similarity and less contrast will be found than was observed in comparisons of legislatures and executives. The United States and Canada have drawn their decisive legal and judicial traditions from Britain. For several reasons, the judiciary is a conservative force in any society and it does not respond to changing fashions and needs as rapidly as other parts of government do. Thus there is a marked similarity and, in the main, only superficial differences. The real contrast is between the legal and judicial systems of continental Europe which stem from Roman, or Civil, Law, and what is often called the Anglo-American system. Some of these sharp differences will be noted at particular points.

SELECTION AND TENURE OF JUDGES

Reference to Chapter II will remind the reader that, in each of the three countries, the judges are appointed by the executive to hold office during good behaviour and that they can only be removed by the legislature for cause. Agitations for compulsory retirement of aged justices have been unsuccessful, mainly on the not very convincing ground that this opens the way for political interference with the independence of the judges. Thus their tenure is for life or until voluntary retirement and they enjoy complete independence of the executive. Despite the fact that they often make decisions displeasing to the executive and the legislature, there is almost never any suggestion of removing them in the absence of corruption. This security of tenure is not so

fully enjoyed by the lesser magistrates and justices of the peace. In Britain and Canada, these are appointed by the executive and may be removed by it. In the United States, they are elected for short terms by the electorate. Also, the state, as distinct from the federal, judges in the United States are elected, in most states, by popular ballot for relatively short terms. Being dependent on re-election, they cannot enjoy the same assurance of independence. Election of judges is generally admitted to be an unwise extension of the democratic principle but there are only a few states in which it has not been made.

Appointment of the judges in Britain and Canada is in the hands of the government of the day, and in the United States, the appointment of federal judges is made by the President, with the consent of the Senate. It is thus a form of political patronage. In Britain, this patronage is shared by the Lord Chancellor and the Prime Minister. In Canada, nomination is in the hands of the Prime Minister and the Minister of Justice but they usually accept the recommendation of the member or members of the cabinet representing the province in which the appointment is to be made. Appointment is still by order-in-council and therefore requires agreement of the cabinet. However it is substantially correct to say that the particular ministers just mentioned make the appointments. In the United States, the President must get his choice ratified by the Senate which often insists on a critical investigation of his nominee.

Generally speaking, appointments go to persons who have been active supporters of the party in power. As a rule, the capacity and integrity of prospective appointees are also carefully considered but in each country there have been instances where it was difficult to see any merit except services to the party. As there are generally equally capable lawyers in each party, there have been few serious abuses. In fact, there are more complaints today about the general outlook of appointees than over their party affiliations, for reasons yet to be discussed. This is seen most clearly in appointments to the Supreme Court of the United States, where the President, at least, is more genuinely concerned

over the broad political philosophy than the party label of his choice.

One limitation on choice must be pointed out. The judges in the Anglo-American system must be chosen from the ranks of the legal profession. No matter how able or learned in the law a man may be, he cannot be a judge in a superior court unless he is a member of the Bar of many years' standing. Almost invariably, lawyers in active private practice are appointed although, in recent years, a number of academic lawyers with a distinguished record in teaching and research have been appointed to the Supreme Court and other federal courts of the United States.

This limitation to members of the Bar is not thought to be strange, but natural and inevitable. Yet it is sharp contrast to the practice of continental Europe where a lawyer who elects private practice abandons all thought of a judicial career. Continental judges are always trained in the law, but are chosen from the civil service and not from the lawyers who appear as advocates in the courts. The young law student who aspires to be a judge goes from his university to the ministry of justice, a department of the central government, as a clerk and hopes in twenty years to rise by promotion step by step up the higher rungs of the judicial ladder. When a judge hopes for promotion from a lower to a higher court, he is exposed to temptation to try to please his superiors in the ministry of justice, or even the politicians who have influence there. By contrast, in the Anglo-American system the higher judicial posts are rarely filled by promotion.

Complete independence of the judicial power may seem to sort ill with democracy which means popular control of government. In the nineteenth century, this view prevailed in most of the states of the Union, bringing popular election of judges for short terms. There have been abuses of the security of tenure of appointed judges but they have been rare. The law which the judge gives his oath to uphold is a body of relatively certain rules and as long as he is true to his oath, there is not much room for popular control of his actions. Also, he is a member of an ancient profession which has, despite apparent exceptions, a great devotion to the

ideal of an impartial law. A judge who obviously abandons impartiality or gives an interpretation of law which lawyers generally think to be obviously wrong, loses caste in the legal profession. Self-respect and the desire to stand well with their professional brethren are powerful controls on the judiciary.

THE GENERAL STRUCTURE OF THE COURTS

The judges do not give authoritative interpretations of the law at their own pleasure or, as a general rule, at the request of the executive or legislature. They interpret the law while sitting in court to settle disputes between parties appearing before them. The Anglo-American courts are just as important a part of the judiciary as the judges. A court is not merely a physical location and a collection of equipment like stage properties. It is an institution with a set of officials and records, an atmosphere and an orderly though complex procedure for hearing and deciding disputes.

The courts of continental European countries can be described, for the sake of contrast though not with complete accuracy, as branches of a ministry of justice, which is, in turn, an executive department of the central government charged with the administration of justice. Before the coming of the dictatorships, at any rate, the judges had security of tenure and independence but they were even then in a sense, civil servants. The ministry of justice organized courts in districts across the country to serve the public somewhat after the fashion of the organization of postal services. Officials of the court are civil servants who keep the records, make and work the rules of procedure in concert with the judges.

The courts in England were always the King's courts with their roots in executive decree of the early Norman Kings. But at an early date in English constitutional history, they became practically autonomous and their development was powerfully influenced by the legal profession. The practising solicitors are still spoken of as officers of the court. For centuries, the judges and officials were paid, not from the general revenues but from fees collected from litigants.

The judges made—and still make—the rules of court procedure, just as they generated the unique atmosphere of decorum which prevails in a court.

In 1873, the English courts were reorganized on a statutory basis by Parliament and many of the anomalies and anachronisms of six hundred years of customary accretion were cut away. The salaries of the judges and the sums needed for maintenance of the courts are now permanent charges on the public revenues and do not come up for annual appropriation and debate. The executive does not appoint or exercise control over any significant number of the officials of the courts. Appointment of officials is largely in the hands of the Lord Chief Justice, and they do their work under the direction of the judges. There is no ministry of justice. The Lord Chancellor, a member of the cabinet as well as a judge, has a small administrative department but it exercises very little control. The courts are still largely autonomous and in so far as they need to be ruled, they are ruled by the judges.

In the United States and Canada, courts modelled on the English type were created by executive order or by acts of the legislature. Once established, they were given much of the autonomy of English courts in the administration of justice. In Canada, the various court officials are generally appointed by the executive but the judges make the rules of procedure and direct the work of the officials. In the United States, some court officials are elected and some appointed. The Supreme Court of the United States makes the rules of procedure for the federal courts. In some states, the state legislatures, and in others the judges, make the rules of procedure but there is no general executive supervision of the administration of justice. The federal governments of the two countries each have a department of justice with a member of the cabinet at its head but it is not a ministry of justice in the continental European sense. It is rather the department of the Attorney-General, the legal adviser of the government and its attorney in all legal questions, lawsuits or otherwise, in which the government is interested. The

courts and the judges are autonomous in the administration of justice.

The continental European system has many advantages particularly in ensuring adequate decentralization of courts for the convenience of local litigants, a simple inexpensive procedure and an expeditious handling of cases. Its weakness and dangers are illustrated by the problem of judicial promotions, already noted. To what extent are impartiality and independence endangered when the executive branch of government participates largely in the administration of justice? The fear of executive interference has always thus far prevented the establishment of ministries of justice of the continental European type in Britain, United States, and Canada. As a result, there is a confusing multiplicity of courts, each autonomous and separate within the range of matters assigned to it. In Britain, the judicial system is centralized in London. Apart from the justices of the peace and the county courts dealing with petty criminal and civil cases respectively, and the assize circuits, there is no adequate decentralization. When large issues are at stake they must go as a general rule to the courts sitting in London and the litigants must go there too at great expense, a prohibitive burden on the poor. In Canada and United States, there is satisfactory decentralization for the trial of most matters in the first instance but appeals must go to the provincial or state capitals or even to the national capitals. In continental Europe, on the other hand, the final appeal as well as the original trial is heard in the locality.

In the Anglo-American system, despite many reforms, procedure in the courts is still complicated, adding to cost and often involving delay. It is suited to the convenience and to the sense of professional fitness of the lawyers—every profession tends to develop a distinctive ritual—rather than to the needs of poor litigants. However, it must be said in its defence that it is admirably suited to protect the rights of those who can afford its expense and delay. The same can be said of the two or three, or even four, successive appeals which may be taken from one court to another,

contrasted with the single appeal open to the parties in continental Europe.

The Anglo-American legal profession never forgets the meddling of the Stuarts in the administration of justice and resists all proposals that a government department should organize and supervise judicial services on a mass production basis as has been done, for example, in employment office and postal services. It takes justifiable pride and satisfaction in saying that genuinely impartial courts are open to all. Yet, despite substantial steady but slow improvements and a continuing agitation for more, it has no adequate answer to the English judge who retorted, "So is the Ritz Hotel!"

This question cannot be discussed in detail here. It has been sketched for two reasons: to point to the main features of the problem and to bring out the significance of an otherwise dull account of the structure of the courts which now follows.

THE JUDICIAL HIERARCHY

In each country, the court structure is in the form of a hierarchy with its base on the justices of the peace scattered across the country and its apex in a final central court of appeal. At the lowest level, the justices of the peace are laymen without legal training, unpaid or paid only in small fees collected in the course of their work. Their jurisdiction is generally limited to the trial of lesser crimes and misdemeanours but may cover small civil claims as well. In the towns and cities, they are supplemented on the criminal side by police magistrates or stipendiary magistrates (being paid a stipend) who are commonly required to have some legal training.

The next tiers of courts in Britain and Canada are county or district courts staffed by judges chosen from the legal profession with permanent tenure whose jurisdiction is mainly limited to civil claims involving relatively small amounts. Generally speaking, no such tier of courts exists in the United States. At the next level in all three countries are the courts with general first instance jurisdiction, i.e., courts with authority to try all cases of important civil or

criminal consequence. Above this again there are always courts of appeal to which disappointed litigants have, in most matters, a right of appeal and there may be, in certain special circumstances, one or even two further appeals to still higher courts. Courts of first instance are generally composed of one judge sitting alone while courts of appeal have a bench of several judges. This pattern may be set forth briefly for each country.

In England and Wales (Scotland and Northern Ireland are both distinct areas for the administration of justice) the county courts are limited in authority to small civil claims. The court with general jurisdiction in the first instance is the High Court of Justice of which there are several divisions all sitting in London. However, judges of this court periodically go on circuit holding assizes, or sittings, in the "assize towns" across the country. The bulk of the assize work is criminal but civil disputes may be tried there too. The Court of Criminal Appeals sits in London hearing solely appeals from persons convicted of criminal offences by justices of the peace, stipendiary magistrates and judges of assize. In civil matters, an appeal lies to the Court of Appeal in London and thence, in some but not in all circumstances, to the House of Lords which is the highest court of appeal in the realm. The judicial functions of the House of Lords are performed by the Lord Chancellor, seven lords of appeal (eminent lawyers elevated to the House of Lords for this particular purpose), and any peer who has at some time or other held high judicial office.

Only in very special circumstances can an appeal in a criminal case be carried to the House of Lords from the Court of Criminal Appeal. The House of Lords has however, original, or first instance, jurisdiction in a number of matters. Peers charged with certain very serious crimes must be brought to judgment before it. Impeachment proceedings, now obsolete, are also within its jurisdiction.

In the United States, each state has its own judiciary and there are as many systems as there are states. A common pattern, however, can be discerned. Immediately above the level of justices of the peace, police magistrates and other

municipal courts such as juvenile courts, family relations courts and traffic courts, stand the county or district courts. These courts sitting in the county court houses in the county towns are courts of first instance for almost all civil cases and for criminal cases of a serious nature. They are therefore not at all comparable to the county courts in England. In some states, the county court system still reveals the defects to be expected from a lack of unified responsibility for the whole system. Generally, the judges can sit only in their own court and can only hear cases arising in their own district. So the judge in one county may be idle while the judge in an adjoining county is overwhelmed with work. However, many states have established judicial councils composed of judges, lawyers, state officials, and laymen which are making progress in meeting this and other defects.

Some states have decentralized district courts of appeal. Whether they have or not, every state has, at the apex of the hierarchy, a supreme court, as it is generally called, a final court of appeal sitting at the state capital. In cases which involve an interpretation of the national constitution and a decision whether or not certain rights can be claimed thereunder, an appeal lies from it to the Supreme Court of the United States in Washington.

Except where some such question arises, the state courts try almost all cases turning on the interpretation of the state constitution and laws. The federal courts established by the constitution or by Congress have jurisdiction over such matters as disputes between states, or between citizens of different states, whatever the subject matter of the dispute, and also over actions brought by a state against a citizen of another state. But the main work of the federal courts is to try cases arising under the laws of the United States, principally laws made by Congress. For example, when the mails are used to commit a fraud, the same act may be at once an offence against the law of a particular state and also an offence against the laws of the United States regulating the use of the post office. For the former offence, the culprit would be tried in a state court, and for the latter, in a federal court.

At the lowest level in the federal court structure stand the district courts in some ninety districts across the United States. At the next level are the circuit courts of appeal, one for each of ten federal circuits. These courts were established to take some of the burden of appeals from the district courts off the Supreme Court. So there is now no general right of appeal from the circuit court of appeal to the Supreme Court. Rather, the Supreme Court decides on the circumstances of each application for an appeal whether it will hear it or not. The test applied is whether or not the case raises questions of great constitutional or public importance. A judicial council composed solely of federal judges, and an Administrative Office of United States Courts set up in 1939, exercise some centralized control over the administrative detail of the district courts and the circuit courts of appeal.

In addition to hearing appeals, the Supreme Court is a court of first instance in a number of matters, particularly disputes in which foreign ambassadors or consuls of foreign powers are parties, and disputes in which one or more states of the Union are parties.

Although Canada is a federal state, its judicial structure shows marked variations from that of the United States. Section 92 of the British North America Act assigns almost the entire administration of justice to the provinces. The establishment and maintenance of the courts, their organization and procedure, with the exception of procedure in criminal matters, are the responsibility of the provincial legislatures and executives. Subject to minor exceptions, all disputes, whatever the persons or subject matter involved and whether or not the decision turns on provincial or Dominion law, are brought to trial in the provincial courts. For example, the criminal law of Canada is made by the Dominion Parliament but the prosecution of offenders is invariably in the provincial courts. On the other hand, the judges who dispense justice in these courts are, with minor exceptions, appointed by the Dominion cabinet because the British North America Act reserves the appointment of all superior court judges to the Dominion.

The structure of the courts varies from province to province and a short description of the general pattern will be impressionistic rather than accurate. The first tier above the justices of the peace and the magistrates' courts comprises the county and district courts. Unlike the county courts in England, they generally have both criminal and civil jurisdiction. But they are not, like the county courts in United States, possessed of general jurisdiction over all criminal and civil matters, however serious and important. The most serious criminal charges and civil claims of large amount or consequence cannot be tried in these courts.

It is the next tier of courts, variously called the High Court of Justice, the Court of King's Bench, the Supreme Court, which have general jurisdiction in the first instance. Reasonably adequate decentralization is achieved through sending these judges periodically on circuit throughout the province. At the apex is the Court of Appeal sitting in the provincial capital to which appeals in civil and criminal matters go.

In certain matters, particularly where substantial sums are in question or where an interpretation of the constitution or the validity of Dominion or provincial legislation is involved, an appeal may be taken from the court of last resort in the province to the Supreme Court of Canada in Ottawa. This is a federal court created by the Dominion Parliament. Its main function, unlike the Supreme Court of the United States, is to hear appeals from the provincial courts. Of rapidly growing importance, however, is the duty imposed on it by an act of the Dominion Parliament to give, at the request of the Dominion cabinet, advisory opinions on the proper interpretation of the British North America Act and on the constitutional validity of Dominion or provincial legislation. Much of the judicial interpretation of the legislative powers of the Dominion and the provinces under the British North America Act has been secured in this way in recent years.

There is one other federal court, the Exchequer Court, with a very specialized jurisdiction in the first instance. It hears cases in which the Dominion Government is a party as

when a citizen makes a claim against it or it brings an action to enforce payment of tax or other revenues. It has exclusive jurisdiction to decide disputes arising over copyright, patents, and trade marks. It also has power to decide legal disputes between a province and the Dominion, or between two provinces in so far as particular provinces pass legislation submitting themselves to its decision. There is, therefore, no hierarchy of federal courts in Canada interpreting and applying federal law generally as in the United States.

There is a still higher court to which Canadian litigants, in certain special circumstances, can appeal: the Judicial Committee of the Privy Council sitting in London. It is a body specially constituted to hear appeals from the courts of the British Dominions and colonies. Since it must hear appeals from countries with such various laws as India and South Africa, it has to have a wide membership assuring it of experts in Mohammedan, Hindu, and Roman-Dutch law. But for most of its work, the active members of the Judicial Committee are the Lord Chancellor and the law lords of the House of Lords who are *ex officio* members. It is they who generally give the final interpretation of the British North America Act.

The main work of the Judicial Committee in relation to Canada is appeals on constitutional questions, which issues are generally carried there as a matter of course from the Supreme Court of Canada or directly from the provincial courts. Appeals to the Privy Council in criminal cases have been abolished entirely. There is no right of appeal from the Supreme Court of Canada in civil matters but leave to appeal may be granted by the Judicial Committee if the issue at stake is thought to be of first rate importance. This can almost always be established if a constitutional question is involved but only rarely where it is not. Yet the fact remains that particular Canadian litigants may have to face three or even four appeals, the latter two at places far distant from their place of residence or business.

The injustice of putting litigants to the expense of carrying an appeal to London and the widespread dissatisfaction in Canada with the Privy Council's interpretation of the

British North America Act will likely bring an early abolition of all Canadian appeals to that body. A bill for this purpose was introduced in the House of Commons just before the war but action on it was postponed for the period of the war.

THE FUNCTIONS OF THE COURTS

It is somewhat misleading to say that the function of the judiciary is to interpret and apply the law. The essential primary function of the judiciary is to hear and decide disputes. Sometimes disputes in the courts are entirely concerned with questions of fact and judges have only to decide the baffling question which party to believe. Often, however, a dispute involves differing interpretations of the law and, in order to give a decision, the judges may have to determine what is the proper interpretation. But their job is to give a judgment on the dispute and they generally refuse to give gratuitous opinions on the law which are not necessary for the decision in hand.

The general rule in the Anglo-American system is that the courts cannot be set in motion to grind out interpretations of law in the absence of a dispute between parties with an interest in the result. The courts are always open to hear charges that a particular person has committed a crime or complaints that the civil rights of the complainant have been infringed. The law, however, does not require the courts, or even enable them, to resolve doubtful points of law which come casually to their attention. Nor does it enable them, except in a few special circumstances, to give advice to perplexed individuals who are in doubt as to what the law requires them to do. Normally it is only when an individual comes forward asserting that a wrong has been done, and that he should be compensated or that the culprit should be punished, that the courts are put in motion.

It follows that in almost all cases the action of the courts is compensatory or punitive and not preventive. As a general rule, individuals cannot be restrained by judicial action merely on the ground of a plausible suspicion that they are about to commit a wrong against the state or another

citizen. Thus, in war-time, special legislation has always to be passed by the legislature authorizing the detention of persons who are strongly suspected of seditious aims and traitorous designs not yet put in execution. The abuses to which such powers of detention are always open, and sometimes put, emphasizes the importance for individual liberty of restricting very sharply preventive action by the executive or by the courts. Risks of wrongdoing which sometimes would be irreparable are involved but the law expresses the liberal democratic faith that individual freedom is worth the risk. There is also the difficulty of being sure that a man is of an irresistibly vicious state of mind, and the consequent danger of appalling injustice. It has been thought better that the risks should be taken and punishment or compensation provided after the event.

In this state of the law, it would seem to follow too that neither the executive nor the legislature can require the judges to give authoritative interpretations of the law in the absence of an actual dispute between parties. Broadly speaking, this is true. In United States, the constitution prevents it in the absence of constitutional amendment for that purpose. In Britain, the executive is not permitted to consult the judges on the meaning of particular laws or on the legality of particular executive action already taken or proposed to be taken. Of course, the supremacy of Parliament makes it possible for Parliament to enact a law at any time requiring the judges to give such opinions. In Canada, as already noted, the Dominion Parliament—and most of the provincial legislatures—have enacted legislation requiring the courts to give advisory opinions in constitutional questions, particularly on the meaning of the British North America Act and on the validity of Dominion or provincial statutes. Suggestions for similar legislation have been made in the United States but thus far only a few states have made the enabling constitutional amendments.

The reason why governments nowadays should want advisory opinions from the judges before disputes arise is very clear, particularly in federal states. Much of today's legislation must be actively administered by the executive

and this often requires the setting up of new offices and the employment of hundreds and even thousands of additional civil servants. It often involves also a very drastic readjustment of their practices by numerous individuals and businesses. Unfortunately, however, it is not always easy, in Canada and the United States, to be sure that the legislation is constitutional, and the decision always rests with the courts. Many federal, state, and provincial laws have been held *ultra vires*. For example, in 1937 a Dominion Act to regulate the marketing of agricultural and other natural products was held by the courts to encroach on the exclusive sphere of the provincial legislature, but not before marketing boards under the Act had been put in operation in many parts of the country. Important parts of President Roosevelt's New Deal legislation enacted in 1933 were held unconstitutional by the Supreme Court between 1935 and 1938 after a vast administrative apparatus to enforce it had been set up and put to work. The purpose of advisory opinions by the judges is to get a settlement of the constitutional issue before administrative enforcement of the legislation begins. It is becoming standard practice in Canada to refer the constitutionality of legislation of doubtful validity to the courts almost immediately after enactment.

In Britain, the judiciary cannot declare legislation unconstitutional but it must interpret the meaning of legislation when disputes turning on its meaning arise. The judges sometimes give interpretations which surprise and even dismay the executive and upset its programme of enforcement of the law. As a result, there has been some agitation for a law which would enable the executive to get judicial interpretations in advance. Such proposals are resisted on the ground that they would unduly strengthen the hand of the executive and tend to knit the executive and judiciary into one. If the executive can get opinions from the judges beforehand while the individual who resists the intervention of officials in the sphere of his interests cannot, the latter is put at a serious disadvantage.

The force and bearing of this argument cannot be fully appreciated without looking closely at one of the traditional

roles of the Anglo-American judiciary. It was pointed out in Chapter II that the judiciary has been relied on to enforce the Rule of Law on citizen and government official alike. If government is to be servant and not master, its actions must be limited by predictable rules which are interpreted and applied by some authority independent of the executive. This has been done in the past mainly by the judges of the same courts which settle disputes between citizen and citizen and, in the absence of a law clearly conferring special powers and privileges on the government official, they have required him to observe the standards applicable to private citizens. In this sense, one law interpreted by one set of judges rules everybody. The Rule of Law, or the supremacy of law as it is generally known in the United States, is a very important principle of Anglo-American constitutions.

JUDICIAL CONTROL OF GOVERNMENT OFFICIALS

So the official who is thought to have overzealously exceeded his powers can be brought before an impartial court on the complaint of the aggrieved person. If the police detain a person on suspicion of crime for any considerable time without bringing him to trial for a specified offence, his gaoler can be compelled to appear in the court, and if he cannot show that the detention is lawful, an order for release will be made. Equally, if an official seizes an apparatus which he claims is used for making illicit alcohol in violation of the excise law and which the owner insists is used only for laudable scientific experiment, the owner can have both the fact and the law determined by the judiciary.

In such disputes, the judges do not lean in favour of the official. If they lean at all, it is the other way. For the Anglo-American tradition, of which more will be said later, makes the judiciary a champion of private rights and interests against any suggestion of high-handed action by governments. The independence from the executive which the judge enjoys is not always free from antagonism. So the legal profession and the judges regard any suggestion that the judges should collaborate with the executive as a threat to individual

liberty. The judges, it is said, should not be asked to interpret a law giving powers to the executive until they see, in the actual disputes arising, what use the executive is trying to make of the law in question. The dangers involved in such proposals may be exaggerated. Yet the general rule that judges are to decide disputes over the lawfulness of things already done and not to foreclose freedom of action by preventive measures or by interpretations of law in advance of action is an important buttress of constitutionalism.

In the present day, when great accomplishments are expected of governments, and achievements depend largely on the energy and efficiency of the executive, it is clear why the executive should want to find out from the judges in advance what the judges will uphold. This is particularly true when the judges are inclined to be unsympathetic to the executive. And it applies with special force because in the Anglo-American system it is not the public treasury but the official personally who must pay damages when he exceeds his powers. The gaoler who detains a person unlawfully is liable for heavy damages even though his motives are of the best. Hence when officials are in doubt as to their powers, they are likely to be timid and hesitant in enforcing the law. While this is some protection against executive high-handedness, it also detracts from the vigour of administration. The methods by which constitutionalism has been buttressed are often hindrances to far-reaching governmental action.

At this point, it may be useful to introduce a contrast with the European legal and judicial systems which deal with governmental disputes differently from private disputes. In France, for example, the courts which judge between citizen and citizen have no authority to deal with disputes to which the government, or an official of the government as such, is a party. A claim that an official has exceeded his powers in executing his official duties and thus committed a wrong against a private citizen is heard in one of a number of special courts known as administrative courts. These courts are very closely connected with the executive and the judges who sit in them perform many executive as well as judicial functions. Moreover, the rules of law applied to the

settlement of disputes in these courts differ from the rules applied to disputes between citizen and citizen. There is a special body of law called administrative law which governs in the administrative courts.

The only comparably constituted court known to English history is the Court of Star Chamber which was a branch of the executive and dealt with controversies between the government and the subject. Its memory is infamous because it applied to the officials of the Tudor and Stuart kings a different standard from that applicable to the ordinary citizen and often relied on reasons of state and political expediency to deny redress to citizens in conflict with the Crown. It was abolished three hundred years ago but even today any suggestion of the creation of administrative courts in the Anglo-American world evokes its image in the minds of the legal profession and others.

It was long thought in these circles that the French administrative courts were similar devices for enabling the executive to escape from the restraints of law. In fact, however, during the life of the democratic Third Republic (1870-1940), whatever may have been true prior to that period, the administrative courts were impartial and upright leaning neither in favour of the official nor the citizen. They gave the average citizen better protection against official overzealousness and mistakes than does the Anglo-American system. They were easy of access and had a simple, expeditious procedure. If they found the official at fault, they awarded compensation to the injured party which was paid not by the official personally but out of the public treasury. In Britain, United States, and Canada, on the other hand, the law does not impose on the government and the public treasury any responsibility for official wrongdoing. The official himself is liable but a judgment against him is often worthless because he has not the financial resources to meet it.

Despite certain obvious advantages of this system, Anglo-American opinion clings to the ideal of a judiciary completely independent of the executive and of one law for citizen and official alike. There is a profound suspicion of any judiciary

closely connected with the executive and of any special law for testing the validity of governmental action. To the argument that the French administrative courts were, in fact, impartial it is retorted that what is wanted is not merely justice now, but an assurance of justice in the future. However, it is widely conceded that the public treasury and not the official personally should be liable for governmental acts proved to be wrongful and a change in the law on this matter will likely come in the near future. In 1938, the liability of the Dominion government for damage caused by the negligence of its servants was acknowledged by statute.

Also, as we shall see in detail later, the legislature in adding continuously to the tasks of the executive often gives special powers and privileges to particular officials and even sets up special administrative tribunals to judge the exercise of these powers. That is to say, the unsympathetic judiciary finds the legislature cutting down materially its function of judging disputes between officials and citizens. The great enlargement of governmental activities in the last fifty years has affected even the judiciary and has made, despite the protests of the legal profession, substantial breaches in the Rule of Law as it used to be understood.

The upshot of this discussion of the functions of the judiciary is that its primary function is to judge disputes and to interpret the law as far as is necessary for that purpose. Of course, such interpretations are openly made and furnish guides to the meaning of the law for persons who find themselves in circumstances similar to those in which judges have given decisions. The effect of judicial interpretation in a particular case goes far beyond the particular dispute. How far it goes depends on "the law" just as the limits of the judges' power to give interpretations have been said to depend on "the law." In fact, throughout this chapter, a number of conclusions have been ascribed to "the law" and differences between different legal systems have been noted. It is necessary now for us to inquire what is meant by "the law."

THE ORIGIN AND NATURE OF LAW

It has been said that the function of the legislature is to make the law. In every country in the world, however, there is a great deal of law in force which has never been made by a legislature. Despite their large annual turnout of legislation, present-day legislatures do no more than add to or make minor alterations in a vast body of law which is derived from other sources. Although it lacks the stamp of a legislature, this body of law regulates far more human relationships and is better observed and enforced than are the laws made by legislatures.

We have here an element of great importance for government and politics which is not generated by the political and governmental mechanisms we have been describing. To explain the origin and growth of law and to define its identifying characteristics would require a large volume. So it must suffice to give summarily some clues as to its origin and nature without attempt at precise definition. The law, in the sense of a body or system of rules, takes form through the ages just as does a language or a literature, or an art like painting and sculpture. The current generation builds on the past, rejecting parts of it while maintaining or transforming other parts of it. There is always an interaction between the tradition which is handed down and the needs and desires of the present. Just as the Greeks developed certain canons of art and literature which still command respect, and reappear again and again in many different dresses, so the Romans, for example, developed a body of legal rules, principles, and ideas which still retain authority in various guises in modern systems of law.

Every civilization, and every society, in the course of development, secretes by a process of social chemistry which has never been fully explained, a legal system of more or less distinctiveness. It is closely akin to custom which is a set of rules and practices with its roots in the past and always being subtly modified and developed in the present. People living together in a society find out almost subconsciously that certain practices and patterns of behaviour are a support, if

not a pre-condition, of social life and that other ways of acting are detrimental to or destructive of it. In the most primitive societies, there are always numerous rules to be observed often involving elaborate and intricate ceremonies. At this stage, there may be both law and custom but it is generally impossible to tell one from the other. Both are enforced by the threat of social ostracism, or worse, and by threats of supernatural punishments.

In these early stages, indeed, it is often impossible to distinguish either law or custom from religion. The priests conduct the ceremonies, interpret the customs and maintain the authority of the taboos. Sometimes it can be said that the germ of a legal profession is to be found in the priesthood. Legal systems never break entirely free of these early associations. Even today, rules which only recently were no more than custom, now and then become recognized and enforced as rules of law. While no one is now likely to confuse the lawyer and the priest, everyone will have noted how moral and religious feeling help to maintain the authority of the criminal law. Equally, the ideas of justice and fair dealing which find expression in the rules and principles of the law have been impressed on it by moral and religious feeling and by the ethical standards which are honoured in the community.

It is not easy to say at what point a system of law emerges from custom and religion. Somewhat arbitrarily, we can pick the point at which the priest, who is almost always associated with the interpretation and enforcement of rules of social behaviour in primitive societies, is able to supplement the sanctions of custom and religion by calling on some reservoir of organized physical force to enforce his decrees. When this happens, we can say that the priest has become a judge and the rules which are enforced in this way are law. Customary rules are obeyed because of habit or fear of censure by one's fellows. The rules of morality are obeyed generally because of a fear of, or a respect and reverence for, divine authority. Most of the law gets support from these sources too. Some even contend that no rule of behaviour

can be law unless it accords with the community's sense of what is right and fitting.

In any event, all are agreed that what distinguishes law from custom and morality is the additional sanction of sheriffs, bailiffs, police, gaols, and armed forces to be called into operation if needed to coerce the stubborn. So law is defined as the body of rules which is backed by the organized force of the community. The government controls this organized force and thus law has in it a political element lacking in custom and morality. All three are made up of rules for controlling the behaviour of men in society but law alone conjures up the judge-interpreter, the army and the policeman.

If this is the nature of law, the judges play a double role. They are agents of the government for determining in what circumstances organized political force is to be turned loose on individuals. They are also agents of the community, as distinct from the government, for seeing to it that disputes are settled according to law, i.e., in ways which do not outrage the community sense of right. In fact, the judges in the Anglo-American world do not think of themselves as agents of the government but as the servants, or the high-priests, of the law.

This is the fundamental significance of their substantial independence of the government. The law which they interpret is older than the government and gets much of its support from sources other than the government. It is on this ground that judges claim to decide whether or not the acts of the government and its officials are according to law. It is partly on this ground that the judges in the United States have made good their power to declare laws made by the legislatures to be void as being contrary to a higher law —the constitution. It is on this ground that the judges are sometimes, as we shall see, unsympathetic to laws made by the legislature.

However, legislatures do make law, and in ever-growing abundance. In Britain, the law made by the legislature overrides all other law which may be contradictory to it. Everywhere, the law made by the legislature is for the

purpose of changing the older law in some respect. Law, like constitutions, must always be capable of change to meet changing conditions and new needs and desires. But deliberate, conscious change by legislatures is largely a modern phenomenon. Never before have legislatures undertaken to change law as radically and as frequently as present-day legislatures do.

Before the Industrial Revolution, law, with its roots in custom, changed slowly as custom changes. This generally sufficed because the pace of social change which determines the need for change in the law was very slow. By processes which do not concern us here, law was adjusted almost imperceptibly just as social change was imperceptible at any given time. But as everyone knows, the Industrial Revolution and the continuing technological developments it set going have made more changes in the material conditions of life in two hundred years than had occurred in the previous two thousand. These economic and social transformations have upset the old customary ways of life and have created most of the disorder and maladjustments which legislatures are trying desperately to cure. The law handed down from the past, like the customs by which men lived, fails to maintain order and security in the rapidly changing conditions. Hence the feverish activity of legislatures trying to patch and improvise by deliberate change of and additions to the law. Most of the new governmental functions outlined in Chapter III involve substantial changes in the law. Statutes add greatly to the bulk of the law to be interpreted.

A later chapter will explain something of the impact of legislative law-making on the inherited legal system and on the work of the judiciary. Here it is important to emphasize that there are inherited legal systems and that, despite their being outmoded in some particulars, they still are of great importance. There are numerous legal systems but only two of them need be commented on: the Roman, or Civil Law, system and the English, or Common Law, system. Between them, they hold sway over most of the Western civilized world.

CIVIL LAW AND COMMON LAW

Roman Law had its origin in the custom and religion of the tribes which founded the city of Rome. Over a period of a thousand years, the primitive tribal law of Rome was transformed by the slow piecemeal work of priests, judges, and lawyers into the law of a great empire ruling the then civilized world. It reached its maturity before 200 A.D. When Rome fell, its law fell with it and the barbarian tribes who overran the Empire brought their own customary law with them, among them the Anglo-Saxons who moved to Britain. By the end of the Middle Ages, several systems of law owing little to Roman Law had developed in Europe out of the customs of the barbarians, among them the English Common Law.

The Renaissance, which revived the study of the ancient art and literature also aroused great enthusiasm for Roman Law, a record of which had happily been preserved. Just as the classics became the foundation of the educational system, so the Roman Law was adopted in most of continental Europe as the main body of law superseding, for most purposes, the native law. In the course of time, the countries of Western Europe framed codes of laws suitable to modern conditions but based on Roman Law. The modernized Roman system has been adopted in countries as different as Japan and Turkey, and, of course, it was carried to the colonies of the continental European states. Thus Quebec, Louisiana, California, and South Africa, although now within the orbit of the Anglo-American system, have incorporated in their legal systems varying portions of Roman Law.

Scotland went over to the Civil Law but England did not, retaining her native system of law. This is just another aspect of the remarkable continuity of English political and social development without revolutionary breaks with the past. English law was, by 1500, more fully developed than any of the native systems of continental Europe. It had called into existence a close-knit legal profession maintaining at the Inns of Court in London vigorous law schools where the native tradition was imparted to each succeeding generation of lawyers. These factors aided in resisting the appeal

of the classics in the field of jurisprudence. English law made good its claim to survive and became a rival of Roman Law in the modern world.

At the time of the Norman Conquest, custom ruled the land and ruled it variously in different parts of England. The administration of justice was entirely in the hands of local assemblies of neighbours who met to deal with deviations from the customary ways of behaviour. The Norman Kings pledged themselves to maintain the laws of Edward the Confessor. To help in maintaining order and improving their grip on the kingdom, they gradually took the administration of justice away from the local assemblies and put it into the hands of their officials.

These officials travelled up and down the country on the king's business dealing, among other things, with disputes brought to their attention. They were often puzzled over what rules to apply to these controversies. The custom in different areas was often conflicting or divergent and it was difficult to know what the laws of Edward the Confessor were. They did notice, however, that on many matters there was a similarity in custom across the country. They met the difficulty by resolving to apply "the common custom of the realm." In this way, they came to talk about the Common Law—common because it was generally observed throughout the realm.

This is the origin of the name and the system of English law. But it must not be thought that its sole content continued to be common custom. Where customs conflicted or none could be found, the particular officials who gradually came to specialize in judging disputes and relinquished the administrative aspects of the king's business to others, invented new rules, or borrowed from Roman and Canon Law. To take only one example, the law of property in land came to be perhaps the most distinctive branch of the Common Law. It was partly based on prevailing custom but in the main it was developed in great detail by the judges themselves with one dominant purpose in mind: to meet the needs of the feudal system which the Norman Kings had brought to England and on which they had to rely for govern-

ing the country for two hundred years. The King was the overlord and all England was his estate. Everyone who held land held it of the King, directly or indirectly. The law of property comprised the rules for the orderly administration of this estate. Many other similar, if not so striking, illustrations could be given. The law is rooted in custom but it responds through the creative work of the judiciary to the dominant needs of the time.

This law which was first shaped for the needs of feudal England survived into the modern world and was made over through the centuries into a system of law adequate for a great commercial and industrial civilization and a world empire. Legislation, i.e., law-making by a legislature, played no highly significant part in this development until the second quarter of the nineteenth century. It was the work of succeeding generations of judges who never lost touch with the past, but who also responded more or less slowly to changing needs.

The Common Law was brought to the English colonies on the Atlantic seaboard and there adapted, first to the needs of pioneer America and then later to the needs of industrial America. All British colonies settled by people of British origin took the Common Law with them and so it spread around the world. It was not, however, generally imposed on conquered colonies settled by non-British European stock. South Africa has its Roman-Dutch law, the version of Roman Law adopted in Holland, just as Quebec has a version of the French Civil Law. However, in the case of Canada, the criminal law is uniform throughout the country and is based on the Common Law. Also the commercial law of Quebec has been strongly influenced by Common Law because the commercial class is predominantly of British origin. It is in matters affecting family, property, and personal relations that the Civil Law rules almost exclusively in Quebec.

Law must change when new needs can no longer be denied but its prime function in any given period is to minister to order and stability. For this purpose, the law must have a fair degree of certainty. The sense of security which is the basis of orderly life depends on knowing what others will do

or can be held to in the future. Those who plan for the future must be able to find out what the law permits and requires. As a Lord Chancellor of England has justly said, "Amid the cross-currents and shifting sands of public life, the Law is like a great rock upon which a man may set his feet and be safe." A law which is always changing is uncertain and defeats its own purpose. Moreover, if it is admitted that the judges can change the law, people lose confidence in it and them. Accordingly, judges are sworn to apply the law as they find it. For the best of reasons, and with complete honesty and considerable truth, the judge insists that he does not make law but only interprets it.

The explanation of the paradox of certainty and change is that judicial change in the law must be so slow as to be imperceptible, even to judges unless they have a deep knowledge of history. It can be proved that glaciers flow although casual observers will deny it flatly. Similarly, the movement of the law is by a succession of slight shifts in interpretation of some of its rules, the total effect of which will often not be noted in one generation. As long as social and economic change was also slow, this method of adaptation of law might suffice. But by the middle of the nineteenth century, the pace of social change was so rapid, its effects so widespread and the clamour of new needs so insistent, that leadership in the adaptation of the law was forced on elected legislatures. Conscious and deliberate devising now makes every year a larger supplement to the old, almost unconscious, social process of adaptation.

There is no way of measuring what proportion of the law today is Common Law and what is statute law made by the legislature. Broadly speaking, the great bulk of private law, the law applicable to relationships between private citizens, is still Common Law, although modified here and there by statutes. This includes the law of tort (civil wrongs such as trespass, slander, deceit, assault, and so on), the law of personal relations such as those between husband and wife, parent and child, and the law relating to property and contract. In Britain and the United States, it includes the criminal law. In Canada, the bulk of the criminal law has

been put in statutory form, the Criminal Code, but this is really little more than a reduction of the Common Law on the subject to a convenient written form.

Most of the recent legislation concerns public law, the law applicable to relationships between government and the individual. Much of the public law is still Common Law but statute has added to it in recent years giving new rights and powers to officials and creating new duties and rights for individuals vis à vis the government. As we have seen, the great cause of legislation is the extension of government activities. The assumption of these new functions always requires some adjustment of the relationship between the government and the individual.

The content of the Common Law is an arduous study in itself and nothing useful can be said about it in a short space. But there are some general characteristics of the system which are important for a study of present-day government.

The Common Law is unwritten law in the sense that there is nowhere to be found a compendious set of written rules which authoritatively state that law. Plenty of books have been written on all branches of the Common Law and they are a great assistance in finding the law. Yet none of them is in any sense binding on the courts which must always base their decision on some earlier decision of a court, called a precedent.

For hundreds of years, the cases, or judicial decisions, which involved a significant interpretation of the law have been collected together in hundreds of volumes, called the law reports. The report of a case contains a statement of the facts of the dispute, the judge's decision, and something of his reasons for thinking that the law justified the decision. That is to say, there is in every case, explicit or implicit, a statement of the law applicable to the given facts. To find the law applicable to a dispute arising today, it may be necessary to consult five precedents, or fifty or more. Any-one who wishes to master the Common Law as a whole must master the law reports, "this codeless myriad of precedent, this wilderness of single instances."

There was a time when this could be done but it is past. The accumulation of precedents is now too great. The principal stock-in-trade of the lawyer nowadays is a knowledge of how to use the numerous digests and indices available as guides to the law reports, and a technique for interpreting what he finds there. He collects the cases which are similar to the one he has in hand, noting differences and judging of their significance. He then tries to frame a general rule which will explain these cases. He works inductively from the particular to the general, and having got it, he applies it to his own case. The judge does the same, remembering that the precedents which bind him are decisions in courts which stand above his court in the hierarchy. Once the highest court of appeal has ruled on a particular question, its decision is binding on itself and all lower courts until the legislature changes the rules.

In contrast, the Civil Law is written law. It is always to be found in an authoritative code of general rules which the judge is to apply and he is not permitted to base his decision on precedent to the neglect of the written code. This is a much neater and less cumbersome system, and on the surface, it would seem to leave the layman less at the mercy of the lawyer. However, there is a somewhat esoteric technique for interpreting the provisions of the code and applying it to facts, which only trained lawyers possess. Also, despite the ban on precedents, the courts do develop settled practices in applying the code which come to much the same thing. There is a large body of authoritative doctrine over and above the letter of the code.

Both systems have a set of rules for interpreting the meaning of legislation enacted by the legislature. In the Civil Law, these are few and relatively simple. In the Common Law, they are much more numerous, having been developed in great detail because every decision of a court interpreting the meaning of some section of a statute is itself a precedent to be followed in later interpretation of the same section. Thus, just as the Supreme Court of the United States and the Privy Council have expounded the meaning of the American constitution and the British North America

Act respectively at great length, so the Anglo-American judiciary amplifies the meaning of all statutes which come into question in cases before it. The Statute of Frauds, for example, enacted by the English Parliament in 1677, contains only a few hundred words. It now takes a substantial book to explain in detail what the courts over 250 years have held it to mean. Almost every word in it has been given a special Common Law meaning which may or may not have been present to the minds of the Parliament which enacted it. The statute has been knit into the fabric of the Common Law.

This is a necessary process because every piece of legislation, whether socially wise and necessary or not, is upsetting to the legal system, as a system. Like the grain of sand in the oyster, it is an irritant until it is well overlaid with precedent. Great pearls of judicial ingenuity—not to say wisdom—are the result. The interpretation of statutes is a creative process adding much to what the legislature has said, and sometimes stultifying its purpose.

THE INDIVIDUALISM OF THE COMMON LAW

Another important characteristic of the Common Law is its individualism. We have already noted the tenderness of judges to individuals and individual rights, and their fairly frequent lack of sympathy with current legislation which restricts in one way or another individual freedom of action. This is partly due to the fact that the judges of today are older men whose political philosophy was formed before *laissez-faire* was discredited. Many of them are still disposed to think that the government which governs least governs best. In so far as this is true, the attitude will be significantly modified as a new generation of judges comes to the bench. However, the attitude goes much deeper. It finds expression in many of the rules and principles of the Common Law. For example, there is the principle, subject to certain exceptions, that no one should be held liable to pay damages to another unless the injury complained of was due to his personal neglect or fault. To take one instance of this, an

employer was not liable for injuries suffered by an employee in the course of his employment unless it could be shown to be owing to the personal fault or carelessness of the employer. If an employee was injured owing to the fault of a fellow employee or through his own carelessness, arising perhaps from fatigue, he had no claim on his employer. As already explained, this rule has been changed by legislation.

There are other instances. The Common Law has always been watchful, since Stuart times, of designs by the government against the property of the subject. Accordingly, legislation imposing taxation is always interpreted strictly and if the intention of the legislature is not expressed in the clearest of language, the courts are likely to interpret it favourably to the taxpayer and against the government. Ingenious lawyers find loopholes and the judges insist that it is the duty of the legislature to plug them, if they are to be plugged at all. Similarly, in legislation authorizing the government to regulate business and economic life, restriction of the freedom of business men to do as they like with their property is always involved and no amount of argument on the necessity to protect the public interest will persuade the courts to uphold the actions of the government beyond what the letter of the law requires.

It is sometimes said that the Common Law has no conception of the public interest but only an ideal of the protection of private rights. It would be more correct to say that the Common Law conception of the public interest is the greatest possible freedom for individuals. A famous English judge once said that the highest principle of public policy is that "you should not lightly interfere with freedom of contract." The ideal is that everyone should be free to make his own bargains and then be required, as a responsible individual, to make the best of the bad along with the good.

In short, the legal system, which adjusts itself only slowly to changing conditions, still pays homage to laissez-faire, which has long been abandoned by public opinion and legislatures as a guide to sound public policy. In many situations, legislation now requires individuals to ensure the safety of others, quite irrespective of the issue of fault. The

workmen's compensation laws require employers to pay into a fund which compensates injured workmen even when the accident was their own fault. When legislation provides for minimum wages and maximum hours of work, it interferes with freedom of contract. When the legislature authorizes regulation of the public utility industries, it restricts rights of property and limits freedom of contract. In fact, most of the new activities of government outlined in Chapter III involve substantial restrictions and limitations of this character. The individualism of the Common Law and the collectivist measures of present-day legislatures are by no means reconciled to one another.

The temper of the Common Law on contests between individuals and the state comes out most clearly in criminal trials, where the judge acts, not as an agent of the government bent on getting a conviction but as an impartial umpire trying to balance the scales of justice evenly. Some of the safeguards available to the accused may be listed.

- (1) The writ of *habeas corpus* ensures that he will either be tried within a limited time or released. He cannot be kept in a dungeon for years while the police torture him into confession or wait for Providence to send further evidence against him.
- (2) A reasonable time before trial, an indictment, or charge, must be laid against him. It must set out a specific offence, alleged to be committed at a specific date and place.
- (3) He must have ample time to prepare his defence.
- (4) He is entitled to the expert assistance of a lawyer before and during the trial.
- (5) He must be tried in open court where he confronts his judge face to face. The evidence against him must be sworn to by witnesses *viva voce* in the court and there must be full opportunity for cross-examination—a powerful weapon in exposing falsehoods.
- (6) He cannot be compelled to give evidence which incriminates him. It is his own choice whether he goes into the witness box at all or not.

- (7) Any reasonable doubt which is unresolved at the conclusion of the case must tell in favour of the accused.
- (8) He can appeal against a conviction but the state cannot appeal against an acquittal.¹

Of course, the habitual criminal thrives on these safeguards. But where they are absent the contest between the individual and the state may be a very unequal one and the government can harry its political enemies through the criminal law. The contest may also be unequal in civil disputes between the government and private persons or interests and there is something to be said for the tendency of the judges to lean in favour of the latter. In Britain, where the matter has been given careful study, it is clear that the government, when it takes action in the courts, is a resolute litigant, determined to get its pound of flesh.

The imperatives of public policy are always paramount and private interests must be subordinated. The unsympathetic attitude of the judiciary to collectivist legislation, along with other considerations to be explained later, has provoked a counter-attack by the legislatures in Common Law countries. In many instances, they have taken away from the judiciary the power of deciding disputes which involve the interpretation of such legislation. To give only one example, in Canada and the United States, issues as to whether a workman is entitled to compensation for industrial accident are no longer decided by the courts but by an executive agency, the Workmen's Compensation Board or the Industrial Accidents Commission. This practice of limiting the power of the judiciary has been extended rapidly in the last twenty-five years.

Whether the imperatives of public policy require this kind of action or whether less drastic steps would suffice is not yet settled. A great constitutional controversy has raged over the question for the last two decades in Britain, United States, and Canada, and still rages. More will be said about it in discussing the administrative process. It is raised here to show that, as in other fields of government and politics,

¹In Canada, the Crown has a limited right of appeal on a question of law only.

the growth of governmental functions has had a deeply disturbing effect on the judiciary and the legal system. Under this pressure, long established techniques for helping to ensure that government shall be servant and not master are being revised.

The characteristics of the Anglo-American judicial system which have been outlined all have an important bearing on government and politics. They make it clear that the independence of the judiciary is not adequately stated by pointing to the fact that the judges cannot be dismissed by the executive. The judges administer justice in courts that are controlled by them and not by civil servants. By far the greater part of the law they interpret and apply does not depend on the legislature or executive for its authority and vitality. They are the bearers of a legal tradition which dictates impartiality in private disputes, and, in disputes in which the government is concerned, an aloofness from the urgencies finding expression in legislative and executive action. The system as a whole is more concerned with the protection of private rights than with the enforcement of the public interest as conceived by the legislature. Legislatures in haste to make many far-reaching adjustments of private rights and interests often find these judicial attitudes irksome. What the outcome will be is far from clear.

CHAPTER XI

THE CIVIL SERVICE

THE three-fold classification of governmental powers placed the civil service as a minor branch of the executive. This classification was worked out in a period when central governments had very few functions and these were carried out or "executed" by a relatively small number of officials working under close supervision of the Chief of State or his immediate confidants and advisers. Those who have expounded the classification in modern times were not concerned to improve the efficiency of the central government but rather to devise effective checks on its action. Accordingly, it was rarely thought worth while to treat the civil service as a separate category or to study its distinctive organization.

Yet wherever a central government has established its sway over a wide territory and large population, there has always been a functioning civil service, by whatever derisive term it may have been called. History tells us much about the great ministers of state, the Cecils and the Richelieus, and the magnitude of their accomplishments. It tells us little about the instruments of their will, always a considerable body of officials. As the Norman and Angevin Kings strengthened their grip on England, they developed an efficient civil service. Probably the actual order of events was in the reverse; as an effective civil service was developed, the kings improved their hold on the country. Certainly the first step was Domesday Book, a census and a permanent record, enabling William I to see the size and character of the kingdom he had won, and to devise instruments of control. The compilation could not have been made without a body of devoted servants who at the time were still a part of the king's household staff. In this body is to be found the germ of the British civil service, and historians are now beginning to trace its development through many vicissitudes, but with unbroken continuity to the present day.

Historians generally concentrate on those aspects of the past which are connected with the urgencies of the age in which they live. Today, the civil service and the tasks of public administration which they perform are seen to occupy a position of central importance. We have noted an enormous expansion in the activities of government, and the voluminous detailed work which this involves is performed by the civil service. When governments restrict immigration, impose a tariff on imports or establish a postal service, it is civil servants in the garb of customs and immigration officials and postmen who do the work. When it is decreed that children's allowances or old age pensions are to be paid by the government, it takes hundreds, if not thousands, of officials to make the investigations, keep the records, pay the claims, and supervise the service. We have already seen something of the range of civil service action which is involved in governmental regulation of various aspects of economic life. At every turn, officials are now expected to do many things which the community wants done quickly and well. The civil service has grown enormously and it spends or distributes a large portion of the national income. Everyone has a vital interest in what it is doing and how it does it.

The decision by the legislature that the government should undertake a particular service is only the first step. The decision to fight a war will come to nothing unless an effective organization for the purpose can be put together. Some of the laws made nowadays are left entirely to the courts to apply but most of them, on the analogy of war, require positive action by the government. In effect, the legislature declares war on poverty, ill-health, ignorance, and social injustice as internal enemies of the social order and commands mobilization of the civil service to promote health, education, and economic well-being.

Whether the specific measures agreed on are done well or ill, or at all, depends on administration and administration is, at best, a difficult art. Public administration is greatly complicated in a democracy by the necessary insistence that officials should be kept under control and made responsible to the governed. As we have watched the development of

government activities on a large scale, we have come to realize the vital importance of securing efficient organization of and action by the civil service, and at the same time, of ensuring effective control of administration on behalf of the governed. It is not at all clear how these two objectives are to be won. This and the succeeding chapter will attempt an introduction to the problem by discussing the organization of the civil service and the methods currently used for controlling it.

Before going on to these matters, it will be well to get some idea of the magnitudes involved. In 1840, Britain had a population of 18 millions and the central government employed 17,000 civil servants. At the outbreak of war in 1939, the population had risen to 45 millions but the civil service was approaching 500,000 in number. In 1840, the population of the United States was 17 millions and there were 23,000 civil servants in the employ of the federal government. One hundred years later, the population had risen to some 130 millions and the federal government employees numbered over a million. In 1939, the federal civil service in Canada was over 65,000 in number.

The figures for Canada and the United States do not include the very substantial numbers in the provincial and state civil services. For this and several other reasons, the figures for the three countries are not strictly comparable and they are given here only to show what massive enterprises these governments are. A breakdown of the totals to indicate what these thousands are busied in doing would be significant but it would introduce complications which it would take too much time to explain. As an instance, however, it may be said that in each country prior to World War II about one-quarter of the total was post-office employees. A relatively few great government services of this kind account for the bulk of the civil servants.

Another useful index to the magnitude and importance of the civil service is the proportion of the national income administered by or distributed through the civil service. In 1939 in Britain, the central government expenditures

were £1 billion, or about one-quarter of the estimated national income of that year. In United States, $\$7\frac{1}{2}$ billions passed through the hands of the federal government in 1938, or about 12 per cent of the estimated national income. In Canada, the Dominion government expenditures in 1939 were \$553 millions, or about 11 per cent of the estimated national income. Here again the figures are not strictly comparable. The United States and Canadian figures do not include the expenditures of state and provincial governments, which account in part for the lower percentages.

It should also be cautioned that no worth-while judgment about the wisdom of such expenditures can be made without careful attention to the objects on which the expenditure was made. The public gets a variety of services of great, perhaps inestimable, value in return and only a small fraction of the outlay goes to salaries and wages of civil servants. Also, a large proportion of each total consists of what are called "transfers of income"—sums raised by taxation and distributed to the needy members of the population in the form of social services such as unemployment aid, old age pensions, and the like. Nevertheless, the civil service has to be relied on largely for seeing to it that government outlay of whatever kind accomplishes the purposes aimed at. There is therefore a vital public interest in its efficiency and the uses to which its energies are put.

For these reasons, it is necessary to discuss the civil service almost as a separate branch of government. To the legislature, judiciary, and executive, we must add the administration, or administrative, as it is often called. It must be remembered however that, unlike the other three, it has no sphere of action in which it can count on going its own way. Formally, as was explained in Chapter iv, it is under the direction of the executive, the cabinet or the President. In fact, it is now so vast and its operations so extensive and complex that neither the President nor the cabinet can give close supervision and direction to its activities. Officials take every day a multitude of decisions which are not approved in advance by the responsible executive and often cannot, in practice, be reversed by it.

This has led some observers to say that the civil servants are the real governors of the country. This is the substance, such as it is, behind the cries of "bureaucracy," which, of course, means government by officialdom. Some attention will be given to this matter in the next chapter after the structure and characteristics of a civil service have been outlined.

HIERARCHICAL ORGANIZATION OF THE CIVIL SERVICE

Subject to minor qualifications, civil service organization is hierarchical. The old and familiar model to which it can be compared is military organization. At the base are the great mass of private soldiers whose duty is to obey and, at each succeeding higher level, wider and wider powers of command are lodged until the commander-in-chief with overall authority is reached. The civil service hierarchy can be most easily described by starting at the top and indicating descending levels of decreasing authority. At the apex, stands the cabinet, or the President, controlling the civil service, but not a part of it since their tenure is temporary and political. The service is divided into a number of departments, each headed by a member of the cabinet who is assisted by a permanent secretary (to use the British structure as an illustration). Each department is divided into a number of divisions headed by an assistant secretary, and each division into a number of sections headed by a principal. The administrative heads of the sections, divisions, and departments, are assisted in their work of direction and control by a small number of secretaries and assistants known as the Cadet Corps of Assistant Principals. In the sections are the bulk of the civil servants carrying out the work of the government. Physically, the civil servant may be located in the central departments in the capital, or in one of the branch offices scattered through the country, or even in a foreign country. But wherever he is located, he is firmly fixed somewhere in the hierarchy. If he has subordinates, they are directly answerable to him, and he in turn to his immediate superiors. At each level, a great number of routine operations which can be performed

without seeking the sanction of higher authority are carefully prescribed. Instructions, requests, or suggestions from the top are sent down the line of authority step by step, and complaints, information, and requests for instructions from the lower levels go up in the same way. One of the great sins against officialdom is to by-pass furtively an immediate superior in seeking the higher reaches of authority. There are sound reasons for the taboo on such action but it is clearly one of the reasons for the ponderousness of the government machine when unprecedented situations arise.

It is not quite inevitable that civil service organization should take this hierarchical form but no other form has yet been discovered which fits the requirements of present-day democratic government. The civil servant exists to serve the community in the way in which the community wants to be served. It has been argued already that the only workable criterion of what the community wants is what the majority party insists on or is prepared to support. The only way of ensuring that the spirit of public policy will be made flesh among us is to have a clear line of authority descending from the political heads of the government to the lowest civil servant. Otherwise, there is no way of galvanizing a civil servant into action at the command of the majority party. Also, it would be impossible for the public to enforce responsibility on the civil service for sins of omission or commission if a search had to be made in every case through the civil service for the particular individuals who acted or failed to act in a given situation. It can only be done if responsibility can invariably be thrown on a few identifiable persons at the top. This necessitates a line of responsibility from the lowest civil servant to the top. Command downward and responsibility upward is the essence of hierarchy.

These considerations do not, of themselves, necessitate the interposition of several levels of authority between the mass of civil servants who do the work and the minister at the top. But other factors do make it necessary. Many of the operations of the civil service are performed at great distance from the capital and it is physically impossible to consult the minister on every problem of decision which

arises locally. More important, each department of government employs hundreds or even thousands of civil servants and it is just as impossible for the minister to supervise personally the activities of each as it is for the general to command each regiment, company, and platoon in detail. There must be several ascending levels of authority at each one of which certain problems of discipline and direction arising from below are drawn off and decided so as to ensure that only the large and vital questions reach the desks of the busy minister and his immediate aides. In short, much of the work of administration has to be decentralized if it is to be done with any efficiency.

Dividing the civil service into departments is partly for the purpose of decentralizing the bulk of the decisions which have to be made in running any large organization. It is also for the sake of getting the advantages of specialization which are vital for the success of any large organization. The clerks in a country general store are generally able to serve at any counter. But the great merchandising units of the large cities are department stores with at least a separate sales staff for each department. In the same way, governments find it necessary to set up separate departments to specialize in the regulation of transport, commerce, and labour matters, in supplying services to agriculture and to war veterans, in supervising public health, education, and so on. Yet these departments cannot be water-tight compartments. The department of education is always having to concern itself with questions of the health of children, the regulation of transport is always raising questions which affect labour and agriculture, and the supplying of services to agriculture bristles with problems of education.

No matter how the work is divided, the work of each department impinges on several other departments. The same is true of the division of work within the divisions and sections of each department. So a great part of the work of heads of sections, divisions, and departments is the co-ordination or integration of the several work units under their control. And perhaps the most vital part of the work of the executive, be he President or cabinet, is the co-ordinat-

ing of the work of the separate departments of the government. The more the advantages of specialization are sought, the more pressing become the task of integration, the settling of disputes between departments, and ensuring that they do not frustrate one another by working at cross-purposes. The hierarchical organization gives the unity of ultimate command necessary for this purpose.

Unity of command alone does not ensure co-ordination. There is a strict limit to the number of departments a chief executive can co-ordinate and the experts would place the number nearer ten than twenty. The reason is that the number of interrelationships increase with the number of departments by geometric progression and soon become too numerous for the mind to grasp. Therefore, the administrative answer to continually increasing activities of government is bigger departments with more levels of decentralization within each of them rather than more departments. Co-ordination can only be maintained by increasing the distance from the apex to the base, thus slowing action and decision still more. This implies that there may be a point at which colossal highly centralized organization breaks down. Certainly present-day governmental organization makes very heavy demands on administrative skill and ingenuity.

One of the devices for co-ordination is to have one or more departments whose main functions are to control and co-ordinate certain aspects of internal management of all other departments. The commander-in-chief of an army is supported by a staff which is engaged in thinking and planning rather than in active field command. Government also has agencies for this purpose. The most obvious of these is the treasury, or department of finance. We have already seen how this department, through its control over departmental estimates and its power of audit of expenditures, maintains a powerful check on other departments. Sometimes, the treasury, as in Britain, has control over personnel also, thus becoming an efficiency expert for the chief executive and performing for him a great many of the tasks of co-ordination. Other aspects of departmental housekeeping may be similarly centralized.

Such devices make organization still more complex. They are an aid to efficiency and co-ordination only if the administrative skill necessary to operate them is available. For example, a staff agency for planning and co-ordinating the work of the various departments may be attached to the President or cabinet. Rivalry commonly develops between the civil service heads of departments and the staff agency as to who is to have the ear of the executive in decisions affecting a particular department, and the department may find a major interest in sabotaging the proposals of the staff agency. Administration may be made worse rather than better by this refinement. There were numerous conflicts of this order between members of President Roosevelt's "brain trust" and the administrators in the departments.

It would merely be confusing to try to describe and contrast in a brief space the administrative structure of the three governments. It is necessary, however, to see at this stage how the political and administrative are linked together. In the course of this exposition, some concrete indications of the structure may be given. In Britain and Canada, the cabinet is the link. It is the agency of final co-ordination, and unity of command is ensured by the conventions of unanimity and collective responsibility. Before the war, the British administration was divided into twenty-four departments and the Canadian into fifteen departments, each headed by a minister. In Britain, some of these ministers are not of cabinet rank.

Directly under the minister is a senior civil servant who is the minister's deputy performing for him most of the work of administering the department. In Britain, he is appropriately called the permanent secretary of the department because his post, acquired by promotion within the civil service, gives him security of tenure. In Canada, he is generally known as the deputy minister because, according to the established practice of earlier years, a new minister, on his accession to office, brought with him a trusted assistant to supervise the work of the department, and when the minister went his deputy often went with him. But the

much greater complexity of departmental management in recent years is forcing a recognition of the need for a permanent officer at the head of each department and the post is becoming a secure job although it is not yet, as a rule, filled by promotion from within the civil service.

Many of the notable accomplishments of British administration are largely due to the team-work of the amateur minister (who is, after all, a politician and not an administrator) and the expert civil servant in the direction of the department. It is through their collaboration that public policy as determined by elections and party majorities is reconciled with what is administratively possible or inevitable.

The department is divided into divisions, and divisions are sub-divided into sections each headed by permanent civil servants—assistant secretaries and principals respectively.¹ These and their secretaries and immediate assistants, and the permanent secretary and his assistants, form what is known in Britain as the administrative class of civil servants. They are occupied, not in performing the services which their department provides for the public but in administering the department. They see to it that legislation and other political decisions which come down from above are turned into action. Whether or not the department is an effective working unit depends on the quality of the direction they give. They funnel up to the cabinet all those problems of administration which have political implications, whether they are internal problems of administration or concern the relation of the department to the public. These problems are not sent up in the raw form in which they arise. It is the function of the administrative class to collect all the available data which may bear on the decision and to submit memoranda outlining the alternative courses open and explaining in detail what the consequences of the alternative choices are likely to be.

The minister and the cabinet, who are always having to decide grave questions about people they have never seen and about situations which they have never examined at

¹Here again it is the British organization which is being described.

first hand, rely on the administrative class to supply them with every fact and argument which may have a bearing on the decision, except, of course, political expediency in which they themselves are the experts. This circulation up and down through the administrative class sets the tone and temper of the department, determining whether its performance will be mediocre or distinguished. When we come to consider the methods of recruiting civil servants, special attention will have to be given to the selection of the administrative class.

In the United States, the President stands alone at the apex of authority and responsibility. His cabinet are his subordinates for controlling the departments and keeping him in touch with administration. The secretaries of state, as the members of the cabinet are called, are the political heads of the ten departments of state. There were in addition, before the war, some fifty other executive agencies outside the departments and not under the supervision of a member of the cabinet. In addition to co-ordinating the ten departments, the President has some responsibility for watching over the work of each of these agencies. According to almost unanimous expert judgment, this is an impossible burden and the bringing of these agencies into the departments for all or most purposes has been strongly advocated. The reasons for the existence of these separate agencies and the problem which they raise will be discussed in the next chapter.

None of the ten departments of state has an official corresponding to the permanent secretary in Britain. There is not an administrative chief of the department linking it as a whole to the political head. Instead, the secretary of state is assisted by several assistant secretaries of state who are also political and temporary, likely to go when the secretary of state goes. Each department is divided into a number of bureaus (corresponding to the British divisions) each headed by a bureau chief under the surveillance of an assistant secretary of state. With ever lessening exceptions, the bureau chiefs are career civil servants who survive changes of government. The bureaus are divided into divisions

(corresponding to the British sections) headed by assistant bureau chiefs. The bureau chiefs, the assistant bureau chiefs, and their immediate assistants, have been the key administrators.

This structure as described does not provide adequately for departmental integration and, in recognition of this in recent years, the secretaries of state have been surrounding themselves with assistants who help them in planning and co-ordinating the work of the department, and one of whom often acts as a general manager of the department with the duties, but not the acknowledged position, of the permanent secretary in British departments. Administrative-political collaboration goes on at the bureau level between the bureau chief and the assistant secretary of state, and also at the top between the secretary of state and his acting general manager.

COMMON FEATURES OF CIVIL SERVICES

With this brief glance at the hierarchical structure and what it involves it should be possible to understand some of the characteristics of a civil service or, to use the terminology of contempt, a bureaucracy. The features to be considered appear in more or less exaggerated form in every large-scale organization where many persons work together to make a common product or to achieve a common result in which the contribution of each is not easily, if at all, distinguishable. They appear in large industrial and commercial corporations, and also in the bureaucracies of the dictatorships. Those selected for discussion are found in more marked degree perhaps in the civil services of democratic states than anywhere else.

That they are so found is mainly due to the fact that the civil service in a democracy works under very peculiar conditions. The control exercised over it from the top is both more lax and more severe than in other bureaucracies. Because of the conflicting and unreconciled interests in the electorate, in the legislature, and in the political parties, direction of the civil service is often vacillating and lacking in vigour. Many groups think it better to let sleeping dogs lie and do not want to rouse the civil service into unwonted

activity. There are always influences tending to let the civil service go slack. On the other hand, because the civil service deals so much with the private interests of groups and individuals whose rights must be respected to the letter except in so far as legislation authorizes interference, there is very rigid control of the actions of the service from the top. There is more reliance on the bit and the tight rein than on the spur. The sphere in which the civil service is free to act imaginatively and explore the way to new pinnacles of achievement is very narrow.

One characteristic has important consequences in all directions. Government usually has an unchallenged monopoly of the activities it carries on. This is obvious in the case of the postal services but no less true in most other things. Government is mainly occupied in doing the things which it has been decided, rightly or wrongly, we will not do, or cannot do effectively, for ourselves, either individually or by voluntary co-operation. This is just as true of the regulation of business as it is of the provision of social services.

The existence of a monopoly means that there is no direct and automatic test of efficiency. Postal rates may be too high but it cannot be proved by pointing to a competitor who provides the same service at lower rates. Those who are convinced they are being overcharged cannot bring the government to terms by transferring their account to a competitor. Government never has to face the hard choice of increasing the efficiency of its staff or going out of business because more efficient producers are underselling it on the market. As a result, the government is an easy-going employer, satisfied with short hours, a modest pace of work, and easy discipline. Civil servants may be dismissed for political reasons but rarely for slackness or incompetence.

In time of war, the serene calm of the civil service gives way to bustle and feverish activity. Those at the top drive harder because they have a goal which challenges all their powers. Conflicts of interest within the community are set aside while the one supreme aim is being pursued. Also many, if not all, civil servants find an incentive which is often lacking in peace. Where the individual applies himself

to a task he has set himself and masters it, there is a savour both to the challenge and the accomplishment. In any large organization, by contrast, it is extremely difficult for any one person in it to grasp the objectives at which the organization is aiming or to see the relation of his duties to that objective. Moreover, we have seen that it is hard to get agreed definitions of the public interest and civil servants are sometimes lukewarm about the goals at which they are expected to be aiming. Powerful incentives for the rank and file in a large organization are hard to find. Where the public interest can be objectified in the winning of a war, the difficulty is in part overcome. Democracies have not yet found how to give a comparable crystallization of the public interest in time of peace. This helps to explain the frequent criticism that the rank and file of the civil service is stolid, unimaginative, and lackadaisical. They lack a sense of mission.

Another feature of large organization is its impersonal character. The owner and operator of the country store comes into direct contact every day with his customers and employees. This is not true either of the manager of the departmental store or of the postmaster-general. When a service is on a mass production basis, it must be conducted on the assembly line principle relying to a great extent on highly standardized and invariable procedures. In addition, central governments are always acting throughout the country at great distances from the centre. Those in control rarely see the persons or situations on which they may have to give final decisions. There are generally several levels of authority between those who make final decisions and those who carry them out.

So the private citizen cannot see those who finally decide unless he can invoke political influence, and the civil servants whom he can see and with whom he has to deal are obliged to treat him distantly and impersonally. They cannot respond to individual cases and appeals as their instinct or reason suggests. They are acting under precise orders or under rules which limit their authority. The relation of the civil servant to his immediate superiors is also impersonal

because they too are not free agents but must answer to those above them.

The best index to the impersonal quality of civil service relationships is the pervasiveness of paper-work. The standardized procedures by which the departments are run, the rules and regulations which are at once the guide and protection of all subordinates are only the beginning of the written work. All significant decisions made and actions taken are recorded as permanent evidence of what has been done, and as a guide for the future. Much of the discussion within a department as to what can or ought to be done goes on paper. The complaints, suggestions, and requests for instructions made by subordinates are recorded. If their immediate superior thinks he cannot or should not deal with the issue raised, he records his views and sends the file on. Like a snowball, it picks up comments, suggestions, queries as it moves along.

Busy heads of departments have not time to go through all this information and they may require an assistant to prepare a *précis* or a memorandum on it. At any stage, the responsible official to whose desk a matter has come may think more information is needed and someone is detailed to collect it and to comment on what he finds—more material added to a growing file. In the same way, complaints from aggrieved members of the public or questions raised in the legislature set going the procession of files from one desk to another. Most of the administrators deal far more with papers than with persons or concrete situations. There is constant danger that they will identify reality with what they see, that they will regard this paper world as the real world and keeping their desks clean as the acme of accomplishment.

Impersonality and paper-work are characteristic of large organization in general. Governments which are strictly responsible to the governed suffer from them in a marked degree. They are expected to act and act vigorously in many matters. It is also insisted that they should do what is right and shun injustice and wrongdoing. It is not easy to combine these virtues because such governments always act under

limited statutory authority. Beyond the margins of that authority they come at once into collision with the vested rights and interests of individuals and groups.

Even where they have clear discretionary power, there is an insistent demand that they act justly. In the public mind, justice means among other things, equality of treatment. There is no great outcry when a merchant treats one customer differently from another. But if one recipient of unemployment relief or an old age pension is treated differently from another, the government is likely to be called upon to justify it. A fierce light beats on constitutional governments as well as on thrones. Under the cabinet system, at any rate, political responsibility is concentrated on the political heads of the civil service and they know that careless action may cost them dearly at the next election.

They therefore tend to limit very narrowly what can be done by their subordinates on their own discretion, and to insist that doubtful matters shall be referred to superiors for decision. They likewise tend to insist that where a discretionary power is to be exercised, the past practice should be consulted to see what has been done in similar cases, and that doubts as to whether the past practice covers the present circumstances should also be referred to superiors. The civil servant at the lower levels of authority who deals with living persons and concrete situations is immersed in rules, precedents, and instructions. It requires great circumspection to obey them all and his caution may make him almost immobile. It is not easy to see how else he can keep out of trouble with his superiors, or the political heads can know what is being done in their names in distant places. The civil servant who will not stay in the rut of routine lives dangerously. In the rut, there is safety and peace.

There is no need to search further for the explanation of red tape. Originally, the term gained currency through the fact that government departments tied up their files with a red binding tape. It is now used as a compendious description of the way these files are built up. To the citizen, red tape means the perverse insistence on the letter of rules and regulations, the completion of inquisitive forms and seemingly

irrelevant questionnaires, the non-committal and evasive letters of civil servants relying on the security of their routine, the passing of the buck to superiors and to other bureaux and other departments. It is infuriating to all who suffer delay or denial in their urgent affairs. In its more extreme forms, it is due to faulty or inefficient organization, or to the stupidity or unnecessary timidity of officials, and therefore can be cured.

But for much of the red tape, there is good and sufficient reason not apparent on the surface. It is the necessary concomitant of large organization and constitutional government. Large organization demands departmentalized division of labour, standardized procedures, and routine. Constitutional government demands hierarchical structure with its concentration of authority and responsibility, and extreme caution in exploring the boundary between public duty and private right.

Another common feature of large organization is standardized procedures for dealing with personnel. This is really an aspect of the impersonality already noted but it deserves separate comment. Effective financial control requires standardization. Financial control has to be worked through a budget of expenditures prepared in advance and adhered to in execution. Budgeting is not possible if each head of a department is free to make what bargains he likes with his subordinates about pay. The only way to prevent this and to stick to a budget is to classify all the positions in the department and assign a fixed rate of pay for each class.

There is another imperative reason for classification. It has already been pointed out that, in a large organization, there is no indisputable criterion of what the services of particular persons are worth. So the employee who works in a niche unseen by the heads of the department has no effective way of bringing his worth forcibly to the attention of his superiors and no assurance that his industry or skill will be noticed or rewarded. Equally, he has no assurance that favouritism among his superiors will not prefer the less deserving in matters of pay and promotion. While he cannot be assured of exact justice, he can be protected against the

grosser kinds of injustice, and his morale consequently strengthened, by a classification of the positions in the entire service to the end that there should be no discrimination between employees in the same class—that there should be equal pay for equal work.

There is, of course, plenty of heart-ache in any classification which seeks to reduce tens of thousands of positions to a relatively small number of categories because few positions can be exactly equated. Some measure of rough justice can be had by careful allotting of similar jobs to one class, assigning to each class a scale of pay and increases and fixing the terms of promotion, transfer, vacations, and retirement allowances, if any. Some measure of equity in these matters is a necessity. Most civil servants get little chance for self-expression and little of the satisfaction of personal achievement in their work. The most concrete of the substitutes open to them are pay increases, promotions, and other perquisites. Their concern with equity on such points may become an obsession and have a most serious effect on the *esprit de corps* of the organization. The proof of these assertions is to be found in the importance now attached by large enterprises, whether public or private, to the growing art of personnel management.

CLASSIFICATION AND RECRUITMENT OF THE CIVIL SERVICE

Classification of a civil service is important for still another reason. It is a prerequisite to recruiting the civil service by any other method than political patronage and spoils, a condition of selecting the man for the job instead of the job for the man. If posts are to be filled by merit rather than by political preferment, it is necessary to know what kind of merit is required. Positions must be classified according to the general nature of the work done, and to the qualifications necessary for doing it, so as to arrive at methods of testing the fitness of applicants. This brings up one of the large issues of democratic government, the method of recruiting the civil service. We have seen that large organization, and particularly a civil service, has a number of

peculiar characteristics. All these create serious problems of securing and maintaining efficiency. The first step in meeting these problems is to secure a high quality of the personnel. There are also important principles of organization and administration to be observed but these cannot make the service better than the personnel of which it is composed.

Before turning to methods of recruitment in Britain, the United States, and Canada, something should be said generally about classifications. In each country, there are hundreds of classes of positions and the plans on which they are based vary considerably. Yet by looking generally at the kind of work performed rather than at the precise range of duties in each case, a civil service can be divided into five quite distinct grades or classes. It is useful for preliminary appreciation of the make-up of a civil service to set them out:

- (1) Administrative—the work of general management such as organizing, directing, planning, and co-ordinating.
- (2) Professional—the class of experts such as doctors, lawyers, economists, entomologists, engineers, and a whole range of scientists concerned with public health, fisheries, forestry, agriculture, and the like.
- (3) Clerical—All the office workers who, working under supervision, are engaged in the voluminous paper-work of the government, including the immediate supervisors concerned with the detail of office management.
- (4) Skilled industrial workers engaged in maintenance, printing, and government enterprises such as the mint and the arsenals.
- (5) Unskilled workers employed on various tasks at roughly the level of skill of day labour.

There are a number of civil servants whom it would be difficult to fit into any of these classes but they are only a small fraction of the total.

In 1850, when laissez-faire was at its peak, civil services were the playthings of politics. With the exception of Prussia which had had for a long time a career service recruited by merit and enjoying security of tenure, those

who controlled the governments in western countries disposed of civil servants and their posts as they saw fit. Democracy inherited rather than invented political patronage. The favourites of monarchs and ruling cliques were succeeded in government posts by the favourites of politicians. Although the United States and Canada for a time rivalled the excesses of older regimes, the significant fact is that civil service reform almost everywhere has been carried through under democratic auspices. The zeal of reformers has found enough support in public opinion to make steady advances in the methods of recruiting for the public service.

At the same time, the changing role of government has played an important part. As long as central governments did little but maintain internal order and security from foreign aggression, there was no urgent need for a highly efficient civil service. When governments undertook to regulate many aspects of social and economic life and to provide a wide variety of essential services, the tasks to be performed became too complex and too important to be left in the hands of a civil service haphazardly recruited by patronage. In 1855, when civil service reform began in Britain, it had already been recognized that the central government had to do something about the social confusion caused by the Industrial Revolution. The first steps were taken in the United States in 1883, and extensions of the merit system have on the whole kept pace with the expansion of the activities of the federal government. In Canada, a beginning was made in 1908 but was little effective until 1919. Government's role of regulator and dispenser of services began later and for a considerable time developed more slowly in North America than in Britain. Broadly speaking then, civil service reform has followed closely the growing importance of government in the every-day life of the community.

As long as the spoils of office went to the victor in the last election, it was difficult to attract competent persons to temporary insecure service with the government. Even if able men did come to it by chance, a reversal of party fortunes in a few years often put them out just as they were

mastering their jobs. *Esprit de corps*, the indispensable condition of efficiency in a large organization, could not be had in these circumstances. Moreover, party politicians had not the necessary techniques, even if they had had the will, to select the many kinds of expert and highly specialized talent which governmental activities now require. Without some recognition of the merit principle, governments could not do the things they do today.

Recruitment in Britain. The scope and methods of appointment by merit may now be considered. In Britain, the entire civil service has been withdrawn from political patronage. All appointments are under the control of the Civil Service Commission, a board of three members appointed by the executive but enjoying substantial independence from executive pressure. The chief functions of the Commission are to determine qualifications for entrance and to test applicants for the possession of these qualities. Once certified by the Commission, candidates at the top of the list are appointed as positions open up.

Generally speaking, the tests are made by open competitive examination. The largest exceptions to this rule are the skilled and unskilled handworkers, who are recruited through the employment exchanges and certified by interview only. No satisfactory examination has been found for testing a janitor's handiness with a coal-scuttle and even manual skills do not lend themselves easily to testing. Professional and scientific workers are chosen by competitive interview from among those who are already members of the professions or holders of scientific degrees. The clerical group are chosen by open competitive examinations of great variety combined with interview. The examinations for this group are partly tests of special aptitude and partly tests of general knowledge and intelligence with the emphasis strongly on the latter. The administrative class are chosen by written general examinations of a highly academic type ranging over history, languages, natural science, economics, politics, and philosophy. No attempt is made to test their aptitude for or knowledge about the particular duties to which they will be assigned. It is sought rather to discover

those who have the imagination and intellect, the industry and self-discipline necessary to master a number of fields of academic study.

It must not be thought that all posts are filled by appointment from the outside as they fall vacant. Indeed, almost all the recruiting from the outside in the administrative and clerical classes is from the sixteen to twenty-four age group for posts at the bottom of the particular class for which they are chosen. Almost all the higher posts are filled by promotion. In some instances, promotion is made to depend on the results of a competitive examination among a selected group of candidates. But generally speaking, the Civil Service Commission in Britain is an examining and certifying body only. It has little to do with promotions which are departmental matters. Nor is it concerned with classifying positions, fixing salary schedules, or with personnel management. These are departmental or Treasury matters.

The wide opportunities for promotion within any one grade or class are closely related to the type of examination. An examination which tests special aptitude for a particular task may give no clue at all to capacity to rise. On the other hand, examinations which test general knowledge and intelligence are likely to discover a civil servant who will quickly learn to master a routine instead of the routine mastering him. They are likely to be able to meet novel situations and therefore to be worthy of promotion. This kind of ability is of great importance for those in the higher clerical positions, sometimes called the executive class, who have to do with office management and supervision.

General intelligence and adaptability are most needed, however, in the administrative class. We have already seen that this class occupies the key positions in governmental administration. There is a most intimate relationship between the capacities of this group and the effective execution of laws passed by the legislature. It largely depends on them whether the lessons to be learned in administration of particular laws are brought to the attention of the political heads of the government as material for deciding on changes and amendments. They are concerned with policy as well

as administration and consequently need breadth of mind and interests as well as mastery of routine. These considerations led in Britain to the adoption of the highly academic examination already described. Experience has more than justified the decision. The most serious criticism made of the method of recruiting the administrative class is that for practical purposes the nature of the qualifying examinations almost limits membership of the administrative class to graduates of Oxford and Cambridge Universities.

It is not so much that the examinations are difficult as that they are based on the course of studies followed in the ancient universities. So the key group in the civil service is almost exclusively drawn from the upper middle class, who alone in the past have enjoyed any considerable access to these educational advantages. This is a criticism of the educational system and class structure rather than of the method of choosing the administrative class.

Recruitment in the United States. The federal Civil Service Commission in the United States is a board of three members appointed by the President, subject to confirmation by the Senate but carrying on its work free of political interference and control. Its main work is to examine and certify candidates for entrance to the federal civil service. It has somewhat wider functions than its British counterpart. Competitive examinations are sometimes used in determining promotions in the United States and the Commission conducts these tests. It is charged with working out the details of classifications of positions within a general plan adopted by Congress. It participates in the establishing and working of schemes for rating the efficiency of civil servants and it has a power of investigating the fairness of disciplinary measures such as suspension, dismissal, and demotion. It has thus a partial responsibility for personnel management within the service.

On the other hand, the scope of its control of appointments is not as wide as that of the British Commission. The President and Congress have the power to say what posts, if any, shall be filled from lists selected by competitive examination, and about one-quarter of the permanent posts

have not yet been brought under the merit system. Even within the classified service, i.e., the classes of positions to be filled by merit, there are numerous exceptions, specified by Congress or by presidential orders. The practice of making and continuing temporary appointments, sometimes for years, also makes holes in the merit system even within the classified service. None of the higher administrative officials whose appointment must be confirmed by the Senate comes within the jurisdiction of the Commission. These are some 3,000 in number and still include about one-half of the extremely important bureau chiefs already referred to.

There is therefore still substantial room for patronage appointments and these are used according to the exigencies of party politics. But with the exception of the appointments requiring confirmation by the Senate, almost all the appointments in the control of politicians are in the lower branches of the service. Generally speaking, the clerical, professional, and scientific personnel are selected through competitive examinations. The type of examinations given differs markedly from those used in Britain. The civil service examinations in Britain are accommodated to the educational system and try to draw some of the best products of the system into the civil service at an early age with little regard for specialized skills. In the United States, the examinations have always been drafted with an eye to the posts to be filled and are therefore framed to test technical competence. Also, they are open to older age groups than in Britain. There is a much greater variety of examinations and while they provide a good test of capacity for a particular job they do not test capacity for other work to which the civil servant may be promoted.

Unlike Britain, the United States has not adopted an academic examination on a wide variety of subjects for selecting general administrative capacity although experiments are being made in that direction. Indeed, the federal Civil Service Commission does not recognize a distinct administrative class. Probably this is in part due to an equalitarian philosophy which dislikes fencing off higher posts as a preserve for those who have enjoyed superior

educational advantages. It is partly due to the fact that many of the higher posts are subject to senatorial confirmation and so remain actively political. There is, of necessity, an administrative class but its ranks are filled either by promotion from other classes in the service or by appointments from outside the service.

The assistant secretaries of state are always political appointments and change with changes of government, if not oftener. They, and the chiefs of bureaux who work under their direction, are the key administrators in the departments. About one half of the bureau chiefs are still in the unclassified service and open as far as the law goes to political appointment and pressure. However, there is a rapidly growing practice to fill these posts by promotion even when they are unclassified and to give the holders of them security of tenure. In recent years, even when bureau chiefs were imported from outside, very few of the appointments have been dictated by patronage considerations. That is to say, higher administrative work is becoming a career in the United States just as it is in Britain. Nothing more clearly reveals the changing attitudes towards the civil service arising from the necessities of present-day government. The efficient conduct of public administration is now so important to the community and makes such demands on skill and knowledge that it cannot be left to amateur partisans who come and go. It is being recognized that the men who run a department must not only understand it but must feel themselves to be a part of it. It is not easy otherwise to account for the self-restraint of politicians in the face of plums of such size and succulence.

It is believed by many in the United States that this tendency must go further and that all high administrative posts in a department below the assistant secretaries of state must be brought into the career service. Also, it is urged that special attention be paid to the recruiting of an administrative class. It is not enough that posts should be filled by promotion. It is necessary to ensure that there shall be in the service a sufficient number of able men with administrative talent who will look forward to, and deserve,

promotion to the highest posts. As matters now stand, those who are promoted to be chiefs of bureaux were originally brought into the service as narrow specialists of one kind or another and not as administrators. What is true of them is true also of their immediate assistants and of heads of the divisions into which each bureau is divided. No one would think of recruiting bomber-pilots solely by promotion of ground-crew who proved themselves handy. In its own way, a government department is just as sensitive an engine with just as close a relation between skilful handling and distinguished performance. On these grounds, it is argued that the British method of recruiting the administrative class should be adopted.

Expert opinion in the United States, however, is not all of one mind on the point. For example, it is pointed out that in Britain there is almost no possibility of promotion from the clerical class into the administrative class, and therefore administrative work is a career for the talents of those lucky enough to be well-born and well-educated. An unstratified society cannot make such a discrimination but must keep clear the road from the bottom to the top. The office boy who becomes chief of a bureau will bring with him an experience which is a surer guide in departmental matters than the knowledge British administrators get from books and memoranda. Whether or not this contention is sound, it is clear that the contrast between Britain and the United States on this point goes beneath the surface and is founded on marked differences in social outlook and social conditions.

Recruitment in Canada. Canadian institutions generally reveal both British and American influences. In the devices for securing the merit system in the civil service, the influences have been predominantly American. The social outlook and conditions in Canada are closer to those of the United States than of Britain, and make the American approach more congenial if not more appropriate. Canada, as well as the United States, had a distressing experience with the spoils system. This experience led reformers to put extraordinary emphasis on combatting patronage in the civil service at the expense of other equally important considera-

tions. The over-emphasis is being corrected rapidly in the United States but Canadian civil service regulations still express it in exaggerated form. The desire to shield the civil service from the politicians has imposed restrictions which are unworkable and self-defeating.

Since the comprehensive reform of 1918-19, the general rule is that appointments to the Dominion civil service shall be upon competitive examination with preference to those who head the examination. The examining body is a Civil Service Commission composed of three members appointed by the government of the day and removable during their period of office only by address of both Houses of Parliament. The Commission, however, is much more than an examining body. To prevent political considerations affecting promotions, and transfers from one department to another, the Commission has been put in control of them with power to insist on examinations if it so wishes. Its approval must also be had for increases in salary of a civil servant. The Commission is the authority for classifying the positions in the civil service with power to divide, combine, or abolish existing grades or classes. It thus has a substantial measure of control over the administrative organization of the departments, making periodic surveys and recommendations. No increase in staff or other significant change in departmental organization can be made without its approval. Its control over organization combined with its power to prescribe by regulation the general conditions of work in the service gives it functions which in Britain are exercised by the Treasury in close conjunction with its financial control.

The formal powers of the Commission almost entitle it to be called a personnel manager and efficiency expert. The Commission is defective for this purpose because of its independence of the government. Those who are responsible for getting the work of the government done cannot be expected to get the best results when they are subject to external control and interference in personnel matters. Giving such functions to an external agency can only be explained as a heroic attempt to shield the personnel of the service from all the political influences which might be exerted through

ministers. In fact, the effort is, in large measure, unnecessary. When politicians cannot get their favourites appointed in the first place, they lose most of their partisan interest in personnel administration.

A plan of classification of positions was adopted in 1919 which follows American rather than British models. It does not recognize a distinct administrative class to which young men are to be directly appointed. It carries further than the United States federal classification an attempt to classify minutely according to the specific duties a post entails, arriving at 1,729 different classes. It calls for examinations to test skill and aptitude for specific jobs at the lower levels and aims to preserve the higher posts for persons promoted from the lower ones. For each class, it plots a line of promotion designed to carry the ambitious man to the top.

The examinations given are designed to test present knowledge, skill, and aptitude for a particular task rather than general capacity. This method of testing is quite satisfactory for a great number of the positions to be filled. It has not been applied at all to appointments of professional and scientific personnel which are made on the recommendation of an advisory board which can judge expert qualifications. But its application is still too wide. The use of practical examinations has its worst results in the selection of appointees to clerical posts who are expected to rise by promotion to administrative positions. This method has failed to bring into the lower posts sufficient personnel with capacity to fill the higher posts by promotion.

The lines of promotion are charted but in most cases they cannot be navigated by those the examination system selects. This is partly due to the refusal of the able and energetic to enter a service where they may have to spend years at stultifying low-paid routine work before a chance of promotion arises. So the higher administrative posts are often filled by smuggling in outsiders. As in the United States, urgent need is forcing a recognition of the situation. In 1935, an academic examination somewhat similar to the type used in Britain for recruiting administrative talent was introduced for the purpose of attracting and selecting

university graduates for administrative posts. This may turn out to be the first step in making higher administrative work a career.

The control of the Civil Service Commission over promotions and transfers is also unsatisfactory. If the administrative head of a department does not control promotions, he is greatly hampered in maintaining a high level of operating efficiency. An external body cannot be fully aware of all the considerations bearing on promotion. In practice, this is largely, though not fully, recognized and the Commission generally decides on the basis of a rating made by the deputy minister. In the same way, the Commission's supervision over transfers and increases in salary is largely formal. All these matters should be handled by the departments themselves in conjunction with the Department of Finance and the present arrangement is workable only because the Commission withholds its hand.

The situation is most unsatisfactory both for the departments and the Commission. The Treasury Board, and ultimately the cabinet, must take the responsibility for the estimates and for all increases in expenditure whether arising from an upward revision of salaries of civil servants in general or from the promotion of particular civil servants. This fact alone is likely to nullify largely the authority of the Commission over salary schedules and promotions. A department may request increases for some of its employees which the Commission declines to approve because that would involve approving increases for many other civil servants of the same class in other departments, a bigger total addition to expenditures than the Commission is prepared to recommend to the Treasury Board. Even when the Commission does recommend increases to the Treasury Board, that body may be bent on economy and refuse to budget for them. The Commission often cannot make good its formal powers. The result is a dual control of civil service matters and friction between the Commission and the Treasury Board.

Such a state of affairs does nothing to enhance the prestige of the merit system and gives positive aid and comfort to its enemies. A faulty classification, a defective examination

system, an impracticable promotion scheme, and an unwise division of authority between the departments and the Commission on personnel matters have led to exasperation and antagonism in many quarters and inspired attempts to remove positions from the control of the Commission. The civil service law which public opinion will not suffer to be repealed or tampered with provides that, subject to certain express exceptions, all appointments shall be upon competitive examination. But numerous exceptions have been made by various expedients until, in 1936, 29,000 of the 63,000 positions in the civil service were outside the control of the Commission.

Of course, it is not imperative, or even desirable, that there should be no exceptions to appointment through examinations. About one-third of these excepted positions were casual posts paying less than \$200 a year. There is no reason at all for wanting to bring such employment under the control of the Commission. It might also be argued—although not without challenge—that there is no reason why a great number of jobs calling for no special skill should be under the merit system. We have already seen that the party system in North America depends on patronage for getting a good deal of party drudgery done. Keeping a substantial number of minor jobs available for the aspirants to petty office helps to lubricate party mechanisms and will do no serious harm to the public service if it is recognized for what it is, part of the price of party government. The posts which must be protected are the professional and technical and the upper clerical and administrative because it is on the incumbents of these posts that the success of the complex operations of present-day government largely depends.

INTERNAL MANAGEMENT OF THE CIVIL SERVICE

For the past thirty years or more, most of the serious study of the civil service has concentrated on problems of recruitment and the merit system. There has been some tendency to think that if good personnel were brought into the civil service, all the important problems would be solved. In the last few years, however, the massive and ramified

activities of governments have directed attention to questions of efficient organization, and effective control on behalf of the governed. The latter question will be given consideration in the following chapter. The question of how to organize and co-ordinate the work of tens or hundreds of thousands of civil servants opens a large field, sometimes inappropriately called the science of administration, which cannot be gone into here. However, a committee of experts has recently given careful consideration to administrative reorganization of the federal government in the United States and some indication of what is involved can be got by glancing at their conclusions.

In 1936, the President of the United States appointed a committee of experts to study and report on the administrative problems of the federal government. The Committee on Administrative Management, as it came to be known, reported in 1937 that administrative organization had failed seriously to keep pace with the growing extent and complexity of the government's work. In their opinion, the work of the government is badly organized and the necessary co-ordinating agencies either non-existent or poorly developed. There are not enough people of outstanding capacity and character in the civil service. In addition to the ten great departments, some sixty other important agencies have grown up haphazardly for which the President has some responsibility of supervision. It is humanly impossible for any executive, no matter how great his capacity, to co-ordinate the work of so many agencies. As a result, there is inevitably great waste, overlapping of functions, duplication of effort, and acrimonious cross-purposes. Because duties and responsibilities in the various agencies and departments are poorly defined and there is no adequate provision for integration, there are smouldering jealousies and recurring quarrels between administrators. The sum of these and other defects, in the Committee's opinion, is a dangerous situation for which remedies must be found.

To meet it, they had one central proposal. to strengthen greatly the position of the President so as to make him an effective centre of energy, direction and administrative

management. The principal specific means proposed were—

- (1) To increase the existing White House staff by six able assistants to enable the President to keep in touch with all branches of the administration and to bring to him all the information essential for great decisions.
- (2) To increase the number of departments from ten to twelve and to bring into one or other of them all the scattered agencies to the end that most of the co-ordination necessary shall take place within the departments themselves and the President be relieved from the overwhelming burden of minor detail and needless contacts.
- (3) To surround the secretary of state at the head of each department with a small number of immediate aides to help him in thinking about and planning the work of the department, and also to provide him with a general manager, a career official comparable to the permanent secretary of British departments, who would carry the main burdens of the management of the department. By the use of these devices, each department could be made a better integrated unit.
- (4) To reorganize the Bureau of the Budget so as to make it a staff agency in close contact with the President continuously engaged on the problems of efficient organization, eliminating waste and duplication, and studying and advising on departmental structure as does the Treasury in Britain.
- (5) To bring together all the functions of personnel management, including those now exercised by the Civil Service Commission, under a civil service administrator in close contact with the President. He should give his entire attention to personnel problems in the civil service, somewhat after the fashion of the establishments branch of the British Treasury.
- (6) To extend the merit system both upward and downward so as to improve the opportunities for a career in the civil service and to bring all but a very few of the highest posts within the merit system.

The significance of most of these proposals has been made clear in the preceding discussion. While there is by no means general acceptance of the concrete proposals, there is little dissent from the criticisms of the Committee. The federal administrative organization has grown at a headlong pace in the last forty years and it has never been thoroughly overhauled. Almost every President in that period has groaned under the incubus of faulty organization and urged radical re-organization without much success. Similar criticisms can be, and have been, made of British and Canadian administration, although in neither is the problem so acute.

The Dominion administration has not grown at nearly so fast a rate and, in any case being on a much smaller scale, it cannot get so badly out of hand merely through defective organization. British administrative organization is huge but has grown more slowly over a longer time. It already has in partially developed form some of the institutions proposed by the Committee on Administrative Management. Nevertheless, expert studies in Britain have several times urged extensive reorganization with no great success.

In 1939, the President submitted to Congress a plan of reorganization to which Congress gave its approval. It contained the substance of several of the important proposals of the Committee. Under it, the President was provided with six administrative assistants to be added to his White House staff, or Kitchen Cabinet, as it is called. A new agency, the Executive Office of the President, was set up consisting of six separate divisions. Of these, four are of interest here. One is the White House staff, the direct assistants of the President, and their administrative establishment. Another is the Bureau of the Budget which is confirmed in its earlier tendencies as the agency for promoting better organization and efficiency as well as for financial control. The third is called the Liaison Office for Personnel Management, for centralized study and supervision of personnel. The fourth is the Office of Government Reports, a centralized information service for the use of both the government and the public.

The significance of this plan was interpreted by the Director of the Bureau of the Budget in 1941 as follows:

A centralized nervous system is the chief form of organism which distinguishes a higher from a lower species of animal. Man can think because what he sees, what he hears, and what he feels are all conveyed to a single centre for classification, comparison, decision, and action. The Bureau of the Budget along with the other divisions of the Executive Office of the President provides a system by which information can be collected, classified, compared and transmitted to the Chief Executive for decision. These are senses by which the President is enabled, under modern conditions to do the job entrusted to him by the Constitution

Man has cut an important figure in the world because of his ability to take thought about his actions. The executive branch of government thus equipped, and occupying as it does a strategic position, may be expected to strengthen still further its position vis-à-vis the legislature and the electorate. Neither the Committee on Administrative Management nor the Reorganization Act of 1939 were directly concerned with popular control over the highly intelligent and efficient administration which they visualize. An introduction to this problem will be essayed in the next chapter.

CHAPTER XII

THE ADMINISTRATIVE PROCESS

THE last chapter dealt mainly with internal aspects of the civil service. Here attention is to be focused on the external relations of the civil service—its connections with and its impact on members of the public. These are of great variety. Almost all the activities of government recounted in Chapter III involve action by civil servants affecting some or all members of the public. Sometimes the government provides a service such as the post-office or the employment exchange. Sometimes it is mixed service and regulation as in public health activities. The government maintains diagnostic clinics and laboratories for analysis and also enforces pure food regulations and a minimum of sanitary measures on municipalities and individuals. Sometimes it is purely regulation as when employers are required to pay minimum wages and maintain safety devices, and when public utilities are required to provide certain standards of service at fixed rates.

Where a service only is being supplied to the public with or without charge, the public wants little more than efficiency, courtesy, and equality of treatment from the civil servant. If they know their jobs, the public is satisfied with good manners from the post-office clerk and with sympathetic understanding of the plight of the unemployed from the clerks in the employment exchange. But when civil servants are engaged in regulating our lives, other considerations enter. Here the official has power to require us to do or to refrain from doing something and he is backed by the organized power of the government. He must act firmly and without fear, favour, or discrimination because he is expected to enforce the public interest even if it is at the expense of private interests. Of course, his firmness will be less galling if it is cloaked in courtesy. We do—and should—resent any unnecessary brusqueness by sanitary inspectors, customs officials and highway police.

Beyond all this, however, is the prime need of good assurance that there will be a limit to the regulating. There must be some way of ensuring that the sanitary inspector sticks to the sanitary code, the customs official to the tariff schedule and the highway police to the traffic regulations. They cannot be permitted to follow their intuitions and impose their own personal conceptions of what we ought to do in the public interest. It is true that their superiors control them and surround them with instructions which they must obey. This is small comfort to those whose protests against official action are met by the answer that orders are orders and must be carried out. The difficulty is that the officials with whom the citizen has to deal directly rarely make the decisions which affect him and he cannot get face to face with those who do.

This fact complicates greatly the problem of controlling the administrative actions of government. On the one hand, men will often make decisions they would not make if they had also the painful duty of imposing those decisions on protesting individuals. On the other hand, men will enforce without question drastic decisions made by others, decisions which they themselves would shrink from making if they had to explain and justify them to those affected. So, where regulation enters, the vital question is a very ancient one, *quis custodiet ipsos custodes*—how to control the controllers, how to permeate the entire civil service with a sense of responsibility.

Seventy-five years ago, the short—and, on the whole, adequate—answer was that official action was bounded everywhere by the law and that no one could be required to do, or refrain from doing, any act except as required by the letter of the law. The law—either Common Law or statute law—defined in fairly precise detail what burdens or restrictions government could impose and the courts were available to punish any official who overstepped or commanded his subordinates to overstep the limits set by law.

This short answer is by no means a complete answer today. We have noted that the present-day legislature

cannot enact all the laws in all the detail necessary and that it delegates a good deal of law-making power to the executive. We have also seen that the power of the courts to sit in judgment on the legality of official action has been progressively limited by legislation in the past fifty years. There is a widening sphere of action open to the executive which the courts are not permitted to control. In a broad sense, officials are still bound by the law but the difficulty is that, over a substantial part of the field of government, the law gives them a discretionary power to make rules and regulations, and then to decide what burdens and restrictions the rules and regulations justify them in imposing on individuals in concrete situations.

THE DISCRETIONARY POWERS OF THE ADMINISTRATIVE

These discretionary powers are conferred by the legislature on the executive. The executive in the narrow sense, the President or cabinet, cannot itself exercise this authority. The decisions to be taken are so numerous and so often require long study and expert knowledge that they are of necessity taken by members of the civil service, or the administration. It is always possible, of course, but not common for the President or cabinet to intervene. The manner of exercise of discretionary powers by officials is often described as the administrative process. Good manners and courtesy in dealing with the public are, as we have seen, highly desirable qualities in a civil service but the success or failure of a government in its public relations does not necessarily raise constitutional or serious political questions. The rapidly growing importance of the administrative process does raise important political and constitutional questions which must be discussed.

In the period between the two world wars, the controversy over delegation of legislative and judicial powers to the executive overshadowed all other constitutional discussion in Britain, the United States, and Canada. The debate produced a large, and often acrimonious, literature. The practice

of delegation was attacked as undermining the very foundations of constitutional government. According to this view, the legislature whose function it is to make whatever laws are needed and to control the executive, abdicates *pro tanto* when it confers law-making powers on the executive. The representatives of the people betray the trust reposed in them when they let an unrepresentative civil service define what the public interest requires. The Rule of Law which subjects official action to scrutiny by independent courts has been a vital safeguard of individual liberty. In so far as the judging of disputes between the government and citizens is taken away from the courts, a most salutary external check on the government is weakened. To allow a government official to judge finally in such disputes is to make the government a judge in its own cause—a violation of the elementary canons of justice. In short, it was argued that the well-tried methods for ensuring that government should be servant and not master are being abandoned.

The practice of delegation was supported on the ground of necessity. Legislatures, it was said, have neither the time nor the technical knowledge to make in full detail all the laws which the public now expects them to make. Democratic legislatures would have been completely overwhelmed and discredited long ago if they had not had the wit to limit themselves in many matters to the discussion and settlement of general principles of legislation, leaving the voluminous details to be filled in by the executive with rules and regulations. The Common Law courts are quite unsuitable tribunals for deciding the disputes which arise out of much present-day legislation. There are several reasons for their ineptitude. Sometimes it is the sheer number of disputes which the judiciary with its present organization and procedure could not begin to handle expeditiously. Sometimes it is the highly technical issues which arise calling for expert knowledge which the judges do not possess. Sometimes it is the judges' lack of sympathy with the purposes of the legislation—purposes which the public wants carried out whether the judges approve of them or not. In short, according to this

contention, the nineteenth-century machinery of government will not meet the twentieth-century needs. Cautious experimenting over the last fifty years has produced the administrative process as a partial answer to the new needs.

The debate subsided with the outbreak of war and the need to concentrate all energies on military objectives. It is being resumed on the return of peace with many new arguments made available to both sides by the experience of war organization. In organizing for total war, the democratic governments relied heavily on the administrative process and developed it at a fantastic rate to a point far beyond its peace-time scope. The legislatures, while reserving to themselves the decision on a few great matters of principle, delegated the planning and management of the war to the executive. The laws which assigned to the population their several duties and responsibilities in the common effort were almost entirely made by the executive through rules and regulations and orders-in-council. Very few of the innumerable disputes which arose between the governments and private interests in the war organization ever came before the courts. They were settled either by negotiation or by orders and directives emerging from the executive or from one of the many administrative boards and alphabet agencies which the executive set up to aid in the task of winning the war.

This experience lends support to the view that the administrative process is the inevitable instrument of large-scale governmental operations. At the same time, it is far from refuting the contention that the administrative process has grave dangers for liberal democracy. There have not been lacking during the war indications that government by administrative order and decision can easily get out of hand. The debate is likely to be sharper than ever.

The place to be accorded to the administrative is one of the big issues facing democratic government. The time has not come to suggest a conclusion. It is much more important at present to try to understand what is involved. Efforts will be made to reduce it to its pre-war scope and therefore

some appreciation of that scope must be got. Its character, whether virtuous or vicious, must be estimated and that can only be done by seeing what it does and how it does it. Finally, it cannot be judged at all without some understanding of its causes.

Its causes can be suggested at once leaving fuller verification to emerge from a discussion of its scope and character. The administrative process is the result of the great expansion in the activities of governments in the last half-century. In Chapter III, a distinction was made between the negative state of the nineteenth century and the positive state of the twentieth century. In the negative state, *laissez-faire* was the ideal. Within a framework of order provided by government, each person was expected to take care of himself, either by his own efforts or in voluntary co-operation with others. Little was expected of governments. The legislature could itself make whatever small supplementary additions to or modifications of the Common Law were required. The laws, whether Common Law or statute, were adequately enforced by the courts punishing those who broke them and thus deterring the bulk of the population from infringing them. The technique, if not the aim, of government was negative. It contented itself with saying, "Thou shalt not."

In the positive state, government ceases to be merely an umpire calling fouls and retiring offending players to the cooler. It becomes a schoolmaster of the old school setting lessons which the citizens positively must learn. The aim of the teaching is to get people to do the things necessary to ensure minimum standards of health, education, safety, and economic well-being for all. The material set out in Chapter III shows how numerous are the fields in which government is pushing the realization of one or other of these standards. The attaining of these standards is regarded as so important that, wherever possible, the government defines in great and precise detail the rules of deportment for well-behaved citizens in a complex society. For the same reason, the government takes vigorous steps to enforce observance of the rules and standards. It is not regarded as sufficient to have the courts punish those who disobey; they must be made to obey. So

the government gets into a great deal of inquisitorial and supervisory activity after the fashion of schoolmasters. We are in the era of the positive state because the state is now concerned to get positive results, by laying on the rod if necessary. It says, "thou shalt," and maintains a great inspectorial and enforcement staff to enforce its commands.

The executive is the only branch of government equipped to put energy into getting concrete results. Wars, for example, are directed by the executive and not by legislatures and courts. So the growth of government activities and the shift in the part government is expected to play have aggrandized the executive. The legislature sets the broad objectives of public policy. The executive uses its administrative establishment to expound these objectives in innumerable rules and regulations, and to enforce observance of such rules and regulations. The way in which this enlarges the discretionary power of officials will be made clear by concrete illustration. The illustrations are actual instances of discretionary powers found in one or other of the three countries in question. Comparable, if not identical, illustrations can be found in all three. The purpose is to indicate the nature of a common development and not to measure its scope in all or any one of the governments under consideration.

DELEGATION OF LEGISLATIVE POWER TO THE EXECUTIVE

The giving of discretionary power to the executive to make rules of law may be looked at first. In most present-day legislation, the legislature, for whatever reason, does not attempt to make the law in all its concrete detail. It sketches in outline the broad general principles and delegates power to fill in the details. Sometimes, as in the emergency legislation authorizing the executive to fight the war, the power delegated is very wide. For example, in Canada, the executive may make such orders and regulations as it "deems necessary for the security, defence, peace, order and welfare of Canada" as long as the emergency of war continues.

Usually, the power given is limited to making rules under one particular statute such as the pure food law or the

income tax law. Even here, the power is sometimes stated generally, "to make such rules and regulations as are deemed necessary or expedient for the operation of this Act," and not limited to making rules on certain specified and narrowly limited matters.

Sometimes in Britain and Canada, the power is delegated to the cabinet. Such delegations can be readily identified as they are always exercised by order-in-council. Sometimes, it is given to a minister of a particular department, or to a board or commission outside the departmental structure such as the Transport Commission or the Minimum Wage Board. In either case, the rules and regulations so made are generally known as delegated, or subordinate, legislation. In the United States, the rule-making power may be conferred on the President, on one of the secretaries of state or on one of the many independent boards and commissions such as the Federal Trade Commission or the National Labor Relations Board.

It will be recalled that the separation of powers imposed by the constitution of the United States reserves the exercise of legislative power to Congress. This might be thought to prevent all delegation to executive agencies of power to make rules and regulations. It does prevent the grant of wide general powers of legislation such as are occasionally given by the legislature to the executive in Britain and Canada. But the Supreme Court has always upheld the validity of the delegation of clearly defined and limited powers to make detailed regulations. In this way, room has been made within the constitution for extensive subordinate legislation by the executive.

It is impossible to give, in a short space, any accurate impression of the scope and extent of the practice of subordinate legislation. Half the statutes of the British Parliament in the nineteen-twenties gave such power to the executive. Over one hundred statutes, being almost half the statutes of the Parliament of Canada in force in 1933, contained provisions authorizing subordinate legislation. In sheer bulk, the annual output of subordinate legislation greatly exceeds the output of the legislature.

Even in what are called normal times, the number of pages of orders-in-council, rules, and regulations put out by the executive under a statute generally far exceeds the number of pages covered by the statute itself. In periods of emergency, legislative law-making is completely dwarfed by executive rule-making. The rules made in one year under the Agricultural Adjustment Act, one of the Roosevelt New Deal measures for meeting the great depression in the United States, covered more pages than all the laws relating to agriculture passed by Congress since the founding of the Republic. The rules made under the National Industrial Recovery Act, another of these measures, in the two years of its existence, filled 10,000 pages. The emergency of war carried this development to hitherto unimagined lengths.

Obviously, no legislature could begin to debate and enact a fraction of the rules which emergencies call for. But even in the normal activities of present-day governments, the legislature cannot find time for much of the detailed law-making. The terms on which the citizen can use the facilities of the post-office, for example, depend much more on regulations made by the postmaster-general than on laws made by the legislature. These regulations determine what shall be mailable matter, fixing the size and weight of packages. They provide for determining what is dangerous, immoral, or fraudulent matter and for prohibiting transmission of such matter through the mails. They also fix, among other things, the conditions of the issue of money orders and postal notes, of the registration of letters, and of the insuring of parcels. Of course, the legislature could take time to make these rules for the post-office but only at the expense of deliberation on other matters. The upshot is that in many fields of legislation the legislature debates and fixes the general policy and the administration makes the rules that are thought necessary to carry out that policy.

Many of the questions to be decided in making post-office regulations require special knowledge. The size and weight of parcels and the scope of insurance and special delivery facilities, among other things, can only be fixed by those who have had considerable experience in the post-

office business and know the general conditions in which it has to be carried on. Whatever regulations are made must be approved and issued by the postmaster-general but they are not made by him. They are made by the permanent civil servants who do the work of running the post-office.

Often the question of what the details of the law should be depends on expert technical or scientific knowledge. Legislatures are not chosen for their scientific attainments, and experts in the civil service must be relied on. If legislation to control the sale of poisons to be used in combatting insect pests and plant diseases is thought necessary, as it generally is, the question what poisons are effective for the various pests, which ones are injurious to plants and animals, what percentage of ingredients and what standards of purity should be insisted on must be worked out by experts. All these matters are normally fixed in detail by subordinate legislation. Scientific knowledge has been applied, in one way or another, in most spheres of economic and social life and when government intervenes in such spheres, it must master the elements of science involved as well as take account of economic and political considerations.

Moreover, when the government undertakes to regulate economic matters it must bring a wide knowledge of economic facts to its decisions. The legislature decides, for example, that employers of labour must pay minimum wages and must be content with a maximum number of hours of work per week from each employee. But conditions vary so widely in different industries that a single standard of minimum wages and maximum hours of work cannot be fixed for all industries and all kinds of employment. So it is left to the administrative agency which is to enforce the legislation to prescribe by regulation the exact minima and maxima for each of the scores of different trades and industries involved. The proportion of apprentices and learners to be allowed in each trade, the minimum scale of payment to them and to handicapped or partially disabled employees as well as many other matters are similarly fixed. The complexity of industry and economic life generally is such that the legislature has

to leave most of the detail of the regulation of economic life to civil servants under the supervision of the political executive.

The intricate regulations which we have seen to be necessary in one sphere of government activity after another can hardly ever be laid down once for all. In some instances, it is by no means clear what should be done and the regulations must be tentative and experimental. In other instances such as the minimum wage and income tax laws, the interests being regulated discover loopholes in the regulations, and these must be plugged by changes in and additions to the regulations. In any field of regulation, new circumstances and new conditions not contemplated when the law was made emerge from time to time and the rules must be adjusted to them. That is to say, much of present-day legislation is continually in a process of adjustment and change. Adjustment can be made best by a body which can act quickly at any time and which is close to the experience gained in trying to make the law effective. This is another reason for lodging powers of subordinate legislation with the administration.

It is clear that the political executive, the cabinet or President, is no more able to make all these regulations than is the legislature. Subordinate legislation generally issues in their name and, because the civil service is under their command, they can modify or veto proposed regulations at any time. If an influential body of opinion is aroused over a piece of subordinate legislation, it will be able to get the political executive to examine carefully the content of the rules and regulations and perhaps to modify it. Short of insistent and convincing external pressure, the political executive accepts without much question what its informed and expert advisers propose on the details of subordinate legislation. Keeping this qualification in mind, it will be convenient henceforth to speak of subordinate legislation being made by the administration, meaning civil servants in government departments or in the independent boards and commissions sometimes set up to assist in the administrative process.

Because it is often left to civil servants to say how the general principles declared by the legislature shall be applied to concrete situations, they have a substantial discretionary power to determine how the law shall bear on individuals and groups. In fact, it is often impossible to say who will be affected in what ways and how much until regulations have been framed and issued. So lobbies and pressure groups are almost as much concerned with the deliberations of the administration in framing regulations as they are with the deliberations of the legislature. With a vital interest in the way civil servants exercise their discretion, the pressure groups likely to be affected are always seeking access to the administration to present their suggestions and protests.

For example, when regulations are to be made under the minimum wage law a large number of employers' organizations and several trade unions are likely to ask to be heard. For every exercise of a power of subordinate legislation, there is a cluster of interests with representations to make. They try to persuade the civil servants, or the political executive, or both, how the discretion should be exercised. The legislature, the representatives of the people, has no direct part in the making of these rules. What then ensures that the civil servants will exercise their discretion conformably to the public interest or the will of the legislature?

In the first place, the legislature sets limits to the rule-making power and any rules which go beyond the power granted are invalid. If the minimum wage board which is authorized to fix minimum wages presumes to fix maximum wages as well, no one need obey the maxima so set. In the Anglo-American system, it is always possible to refuse to obey subordinate legislation on the ground that the legislature never gave the necessary power to make it, and the courts are always open to test such a contention. In this way, subordinate legislation can be kept within the limits laid down by the legislature.

The effectiveness of such a check depends on how clearly the legislature has specified the limits. We have already noticed the power given to the post-office department to make rules on certain specific matters. If the grant of power

stopped with a specific enumeration of particular subjects, there would be reasonably clear limits set to the imaginative rule-making of the civil servant. But, to take a specific example, the Post Office Act in Canada—and many other statutes of the Dominion Parliament—goes on to say that the department may make such regulations as it "deems necessary and expedient for carrying this Act into effect." Where this is done, the courts find it hard to say what the limits are except in cases of flagrant abuse. If the legislature wants to impose sharp control, it must be niggardly in the use of vague, general delegations of power. The signing of cheques in blank encourages profligacy.

Secondly, the legislature can require—and often but not invariably does require—that subordinate legislation shall be laid on the table of the legislature within a stated time after it is made. In this way, the legislature knows what regulations have been made and can find opportunities of debating those it does not like. It can, if it so desires, enact a law repealing any or all subordinate legislation. It can go further and repeal the delegation taking all rule-making power away from any department.

However, in practice, little use is made of the opportunity and regulations are rarely taken off the table. There are so many of them and their subject-matter is so complicated and technical that busy members of the legislature prefer to allot their time to matters which pay larger dividends in public attention. In spite of this, it would be wrong to conclude that the check is ineffective. If outrageous regulations are made, they will be debated in the legislature and someone will have to answer for them. So the administration always keeps one eye on the legislature when framing regulations.

Thirdly, the political executive which controls the civil service is the instrument of the ruling political party and the parties are responsive to electoral opinion. Therefore, the cabinet or President is concerned with the content of subordinate legislation. Proposed regulations which if enacted might rouse significant sections of opinion are likely to get careful scrutiny by or on behalf of the political executive.

One of the best indications of what reactions can be expected is the attitude of interest groups. There is thus close consultation between the executive and pressure groups when controversial regulations are being framed or amended, which provides the most continuous check on subordinate legislation. The nature of this consultation will be considered more fully at a later point in this chapter. For the moment, it is enough to see that there are some checks on subordinate law-making by the executive.

ADMINISTRATIVE ENFORCEMENT OF THE LAW

When subordinate legislation enacted under the powers given in a particular statute has defined with some exactness what individuals are to do or refrain from doing, the executive is ready to enforce the general policy laid down by the statute. As already explained, the requirements of the positive state often cannot be met merely by having the courts impose fines or imprisonment on those who infringe the regulations. The framers of the general policy are not so much concerned to punish offenders as to ensure that the regulations will be obeyed and thus achieve positive results. Accordingly, the legislature often arms the executive with still further powers.

In many of the functions of government outlined in Chapter III, the administration is authorized to employ inspectors with power to enter premises and conduct investigations to see whether the law is being obeyed. Where particular trades and businesses are being extensively regulated, the legislature usually authorizes the administration to require individuals or corporations engaged in one of these businesses to take out a licence. If inspection shows serious infringement of the law, the licence may be cancelled or suspended and the right to engage in that particular business taken away. These are powerful weapons for compelling obedience.

For example, in enforcing pure food laws, the government does not wait until the poisoned consumer of canned meat starts an action in the courts against the manufacturer. It establishes a licensing system and either installs inspectors

in the factories or has them make periodic visits and sample inspections to see that the law is being obeyed. It may cancel the licence if there are persistent infractions.

This and similar techniques have a very wide application. It is not now regarded as satisfactory that those who carelessly allow disastrous fires to break out should be punished after the event. The victims can sue the culprit for damages but too often this is just the old precaution of locking the stable after the horse is stolen. The culprit has not the means to make good the damage he has caused. The community is reaching for an enforced standard of safety and the legislature authorizes the government to employ fire inspectors to enter premises and insist on a minimum of precautions against fire breaking out. Minimum standards of sanitation are not sufficiently enforced by keeping the courts open to punish those who ignore the sanitary code. Medical health officers are authorized to inspect premises and to placard those which they find are not reasonably fit for human habitation. Similar illustrations could be found in many fields of government activity.

This is what is called administrative, as distinct from judicial, enforcement of the law. In discussing the Anglo-American judicial system we saw that judicial enforcement of the law is, by long tradition, punitive and compensatory rather than preventive. It punishes wrong and does not try directly to compel people to do right. Administrative enforcement does try to prevent wrong being done. It is no exaggeration to say that this can be a colossal task if it is undertaken in many branches of human affairs. In part, it explains why the negative state could get along numbering its judges in dozens while the positive state must count its civil servants in tens or hundreds of thousands. It also goes far to explain the increasing inroads on the constitutional principle of the Rule of Law, referred to in earlier chapters. This principle was explained as ensuring that government officials could not impose burdens on the citizens by their own decision but could only do so through the decision of a court that the law justified the burden. With few exceptions, this principle ruled in the era of the negative state.

In the last fifty years, the exceptions have eaten deeply into the principle. The owner of premises may find them closed without the courts having decided the issue whether they are reasonably fit for human habitation or not. In other instances, licences may be revoked by administrative decision without any right to refer the matter to judicial decision. Importers of goods from abroad cannot escape from the customs officials to the courts with their grievances. Foreigners who entered the country unlawfully may be expelled from it by administrative order without being able to get their case before a court. These are but a few instances drawn from widely different fields, in which the legislature in one or more of the countries under discussion has conferred the power of deciding disputes on the administration. The agencies or officials which possess such powers are generally called administrative tribunals.

It may be that some of these instances of administrative power should be approved and others rejected. It is not the present purpose to suggest whether particular inroads on the authority of the courts to settle disputes are justifiable or not. The purpose rather is to examine the nature of the administrative process and see the main reasons for its increasing use. This can only be done by considering still further instances of its use.

ADMINISTRATIVE ADJUDICATION

We have seen that the legislature often cannot make the law in detail for lack of knowledge of all the circumstances to which the law is to be applied. It lays down a general policy in terms of a standard of health or safety which it desires to be achieved. In a significant number of instances, it is recognized that the administration, for the same reasons, cannot make precise rules and regulations, and the legislature makes the best of it by authorizing the administration to apply the standard to particular cases as they arise. For example, it has long been found necessary to have laws regulating railways and other public utilities because of their monopoly position. Such enterprises, if unregulated, always produce a variety of abuses. They charge exorbitant rates, dis-

criminate between those who use the service they provide and give poor service with a take-it-or-leave-it attitude. It is clear enough, to take the case of railways, that the law should require them to act reasonably. But to define in advance what would be reasonable in all the possible circumstances of railway operation is an impossible task. Thus, on these vital points, the legislature merely says that railways must charge reasonable rates, provide reasonable facilities, avoid unreasonable delay in transporting commodities and refrain from unreasonable prejudice against one shipper in favour of another. It then authorizes the Interstate Commerce Commission or the Transport Commission, an administrative agency, to apply these standards to particular complaints as they arise.

In one sense, the Commission judges disputes between the railways and their customers, interpreting the law as stated in the standard of reasonableness set by the legislature. In another sense, the Commission makes law, not by general rules but by a special order for each case as it comes up. In fact, the experts on legal theory are not agreed as to whether these activities of the Commission are legislative or judicial. For present purposes, it does not matter which is the correct view. The essential point is that any body authorized to take all the circumstances of a particular case into account has important discretionary power to affect the rights of those who appear before it.

In the United States for many years, attempts were made to regulate railways by minute rules of law interpreted and applied by the judiciary. They were not effective. In Britain for many years, the function of applying to particular cases the vague standards mentioned above was left to the courts. This too was unsatisfactory and was abandoned. The body which is to enforce these standards on railway companies must know the technical ramifications of railway management and engineering as well as the part played by railway transportation in a diversified economy. The courts do not possess this expert knowledge. In the end, in both countries, the legislature delegated the power of regulating railways to a specialized administrative agency which devotes

most, if not all, of its time and energy to railway regulation and which can draw on the expert talent necessary.

There are a great many other instances, always increasing in number, in which the legislature has authorized administrative agencies to apply vague standards to particular cases and thus to modify the rights and liabilities of citizens. Such instances are most commonly found where regulation of some aspect of economic life is being undertaken. The legislature has a view of the desired result which it embodies in a standard. At the same time, it recognizes the impossibility of visualizing in advance the almost infinite number of different combinations of circumstances which may arise, and of making rules of law to cover them.

In fact, law is not at all a suitable technique for regulating the innermost intricacies of human relationships. Regulation by fixed rules of law is only workable where you can specify particular kinds of conduct as undesirable and forbid them. It is one thing to enact a law making wife-beating a criminal offence. It is an entirely different thing to lay down a complete code of fair and sympathetic treatment of wives by following which a man would fully honour the standard of conduct set by his marriage vows. If comprehensive regulation of marital enterprise ever becomes necessary, it will have to be done by an administrative agency with power to decide according to the particular circumstances of each case.

Law can regulate the margins but not the minutiae of conduct. If the minutiae must be closely regulated, the appropriate technique is military discipline with every hour and every movement of the soldier subject to command. So where government regulation of a trade or business becomes very extensive, there are at least plausible arguments for government ownership and operation where the necessary discipline can be imposed. Administrative regulation of economic life of the order outlined in Chapter III is a half-way house between free private enterprise subject to general rules of law on the one hand, and state ownership where the government gives all the orders, on the other. It is not yet

clear whether the half-way house can be made a permanent stopping-place.

Thus there is today a large sphere where the courts no longer judge disputes because there is no law for them to apply. The judgments to be made in many fields of governmental activity involve discretion which has to be controlled, if it is controlled at all, by the political executive which, in turn, is responsible through the legislature, and/or the political parties, to the electorate. In this way, the discretionary decisions made by administrative officials can be kept in touch with the policy which the legislature and the ruling political party want to enforce.

Also, the discretion can only be exercised satisfactorily in many instances by those with expert knowledge. An administrative tribunal such as the Interstate Commerce Commission or the Transport Commission generally specializes in one type of problem and can be staffed with experts. The judiciary has to deal with all sorts of disputes and cannot be expected to have a wide range of expertise in railways, sanitary engineering, and so on. Further, as already explained in discussing the judiciary, the courts are sometimes unsympathetic to the aims of present-day legislation. Generally speaking, the judges have had little sympathy with governments' efforts to regulate economic life. The case of workmen's compensation legislation is a sufficient example, although not the best one that could be given. This is another ground for limiting the jurisdiction of the courts in the kind of matters we are concerned with here.

There is still another class of modern legislation which confers the power of settling disputes on administrative agencies to the exclusion of the courts. This is the legislation making provision for social services. Where it is decided that the government should make certain payments to those persons who suffer from particular types of misfortune, it is necessary, either by statute or by subordinate legislation, to define carefully the conditions on which persons can claim such payments. For example, old age pensions are payable only to those who can show that they belong to a certain category of age, residence, need, etc. A claim for a pension,

or an application for cancellation of one now being given, raises issues which one might expect to be settled by the judiciary. However, almost invariably, an administrative agency such as an old age pensions board is given power to decide whether a pension should be granted or cancelled, reduced or increased in amount.

The reasons for taking claims to social service payments away from the courts are several. Claims for and disputes over pensions, unemployment insurance benefits, and the like are very numerous. The judicial system with its cumbersome, if not dilatory, procedure could not begin to handle all the claims and disputes which arise and the delays would amount to denials of justice. Most people who make such claims are needy persons and can afford neither delay nor expense. Accordingly, such cases commonly go to administrative tribunals which use a summary procedure adapted to the kind of cases arising and which settle all disputes without significant cost to the claimants.

Encroachment of the administrative on the preserves of the judiciary is going on in many fields. It is everywhere related to the assumption of positive tasks by government. It is a response to the demands of the positive state for preventive rather than punitive action, for close collaboration between the making of law and the interpreting and enforcing of law, for expert knowledge, sympathetic interpretation, flexible procedure, and rapid decision in settling claims and disputes. It is impossible to give any meaningful statement of the extent of the encroachment beyond saying that there are scores of administrative agencies with powers of this kind in each of the countries under study here. The significance of the development can be stated most clearly by saying that the more complex the functions assigned to government, the more specialized administrative tribunals must be used to settle the disputes arising.

The question arises how the administrative can encroach on the sphere of the judiciary in the United States, in view of the prominent place occupied by the separation of powers in the American constitution. We have seen that judicial power is vested in the judiciary and that neither Congress

nor the executive are entitled to intervene in the sphere reserved to the judiciary. However, Congress has presumed to grant to the executive powers which, on the surface at any rate, appear to be judicial and the Supreme Court has condoned the practice within certain limits. Congress can—and does—confer on the executive substantial powers to settle disputes despite the separation of powers.

Although power to make the actual decision has been taken away from the judiciary in numerous instances, it would be misleading to think the courts have been deprived entirely of control over officials in the fields under discussion. Some control always remains with the courts. It is for the legislature to say how far the administration is to supersede the judiciary and the extent of judicial control depends on the statute in each case. If the official presumes to decide questions the statute does not empower him to decide, his decision is not binding and the courts will say so. For example, an administrative order for the deportation of A. B. as an undesirable alien under the immigration laws may be made. However, if A. B. claims to be a citizen by birth, he can always get the judiciary to decide this question of citizenship. For, while the administration has power to deport aliens, and may even have power to deport naturalized citizens in certain circumstances, it has no power to deport natural-born citizens. Every power of administrative decision is subject to limits, broad or narrow, and the courts can always be invoked to see that these limits are not transgressed.

In many statutes which give the administration power to decide particular issues in dispute, provision is made for an appeal to the courts on pure questions of the interpretation of law. Generally speaking, the courts also retain power to examine the fairness of the procedure of administrative tribunals. If the tribunal fails to give a party notice of the proceedings being taken against him or an opportunity to tell his side of the story, the courts will, on request, set aside the decision against him. Also, if the decision is obviously and scandalously wrong it is generally possible for the courts to intervene.

But the courts rarely retain power to do more than quash the decision. They cannot go on to try the case and give their own decision. In effect, they merely order the tribunal to retry the case. The reason for this is clear enough. The courts are experts on matters of law and fair play. The tribunals are the only competent experts on the substance of the matter to be decided by them. So judicial control is of limited scope and, as a practical matter, can only be brought into operation in a small fraction of the cases decided by the tribunals. The administration has a wide range of discretion in settling disputes as well as in subordinate legislation.

ADMINISTRATIVE BOARDS AND COMMISSIONS

We should now be able to understand the current discussions about the role of boards and commissions in present-day government. The powers discussed in this chapter are conferred on the executive. In Britain, they are, in almost all cases, conferred on one or other of the existing departments of government and the minister at the head of the department is responsible to Parliament for their exercise. But in the United States and Canada, boards or commissions outside the regular departments are often—although not always—set up to exercise such powers, particularly when powers to hear and settle claims and disputes are involved.

In setting up independent boards, the legislature takes the view that since the functions to be exercised resemble judicial functions, they should be exercised by bodies with some independence of the government of the day. Accordingly, these agencies are kept outside the departmental structure and they are not directly under the control of the President or the cabinet. In their every-day operations, they are more or less independent both of the executive and the legislature. Canadian examples are the Transport Commission, the Grain Commission, the Unemployment Insurance Commission and numerous provincial agencies such as public utilities commissions, workmen's compensation boards, old age pensions boards and marketing boards. Equivalents of most of these can be found in the United States. Some of the more famous are the Federal Trade

Commission, the Interstate Commerce Commission, the Securities and Exchange Commission, the Social Security Board, and the National Labor Relations Board.

There is in both countries widespread vigorous criticism of the powers and activities of these boards. In part, the criticism is aimed at their independence. They are not judges, members of an ancient profession sworn to uphold the law, yet they have independence of a kind accorded to judges. They are instruments for enforcing the policy of the legislature and the dominant political party, yet they are, to some degree, independent of both legislature and executive. The essence of the criticism, however, is that each of them is a government in miniature violating the doctrine of the separation of powers. For most, if not all, of these boards and commissions also have powers of subordinate legislation. They also have powers of inspection and investigation. They are authorized to launch and carry through prosecutions of offenders against the laws they are administering. In many matters, they are themselves the judges of whether individuals are meeting the requirements of the laws and vague general standards they are administering.

So a board is often, at one and the same time, law-maker, detective, prosecutor, judge, and jury. Those who make the law also interpret and enforce it. The board is likely to be biased in favour of the policy it is trying to enforce. Allowing a board or government department or anyone else to be judge of his own case leaves something to be desired. It is easy to point to instances of capricious, if not oppressive, use of this panoply of powers—abuses which advocates of the separation of powers have always feared.

On the other hand, it is argued that this combination of legislative, executive, and semi-judicial powers in the hands of a board or commission is not likely to be seriously abused as long as the legislature has—as it undoubtedly has—the authority to take back from these bodies the powers it has given them. Up to a point, this argument is correct. It is correct only in so far as the legislature has a genuine alternative. If it is necessary that we should rely ever more heavily on government to perform complex functions, and

if these functions can only be performed through the use of wide administrative discretion, the legislature has not a genuine alternative. It cannot abolish administrative agencies and powers; it can merely reshuffle them.

The problem of keeping administrative discretion adequately under control remains acute even though the powers are always housed in a government department. Although the device of independent boards and commissions is little used in Britain, the same arguments are broadly applicable to the British situation. The same combination of discretionary powers is widely used there. The principal difference is that they are generally given to government departments rather than to independent boards and commissions. This difference has one important consequence. In Britain, anyone who is dissatisfied with the treatment he has received at the hands of the administration can use what influence he has to get redress through political means. He may get members of Parliament to air his grievance in the House of Commons or he can seek direct access to the minister in charge of the department concerned.

This may mean much or little in the cases of particular individuals. It does mean that discretionary administrative powers are always exercised in accordance with the views of the government of the day. Those who can move the ruling political party can influence the use made of the kind of powers we are considering here. But where the powers are in the hands of independent boards, there is no assurance that they will be so immediately responsive to the political pressures that can be exerted on the government. But it would be wrong to suppose that they are sheltered from all external pressure in the way in which judges are.

INTEREST GROUPS AND ADMINISTRATION

Legislative and judicial control of the administrative process are not of themselves sufficient for keeping the administration from getting out of hand. From the point of view of the interests concerned in any particular aspect of administration, the legislature and courts are too remote and the methods of control too roundabout. Thus they

always want to have direct access to the administration to press their views and protests on the President or cabinet, or on the officials themselves. We have already seen that there is always a cluster of pressure groups wanting to be heard when subordinate legislation is being framed. Similarly, various interests always want to be heard when the administration has a discretionary power of making decisions in particular cases.

Despite its employment of numerous experts in various subjects, the government is always conscious of inadequate knowledge about the complex matters it is undertaking to regulate. If it is regulating the manufacture and sale of agricultural poisons, it needs to gather information from the manufacturers, distributors, and users of these poisons. The government also knows that it is much easier to enforce its regulations if it can get the co-operation of the interests concerned. But this co-operation is not likely to be had unless the government takes the interests into its confidence, listens to their representations, and makes adjustments here and there in deference to them.

Accordingly, the government generally welcomes the approach of the interests. The administration of many of the more complex activities of government today is carried on by close and continuous collaboration between the political executive, the administrative officials, and the various interests concerned. Generally speaking, there is as much collaboration of this kind where the administration is organized under an independent board as where it is housed in a government department.

It has been said that the essence of all legislation lies in its administration. Certainly the decisions taken nowadays by the administration under its discretionary powers are often the vital decisions as far as the individuals and corporations affected are concerned. It follows that in so far as pressure groups find the administration accessible and responsive they are better represented in government than if they had been allowed to elect representatives to the legislature. More than that, the influences which mould administrative action are often decisive in determining the content

of a particular government activity. The interests which are well organized and recognized by the government get deference and consideration while unorganized interests do not. In administration, as in legislation, the importance of group organization clearly emerges. Interests must be effectively organized if they wish to make their weight felt in present-day government.

There is a body of opinion which looks for salvation in a fuller organization of all the significant interests in the community. It doubts whether democratic control of administration can be made effective through the legislature and the judiciary. It wants to develop direct connections between the branches of administration enforcing particular laws and the various sections of the public interested in those laws. In relation to any particular law or government activity some interests will want more vigorous administration and more extended application while others will want less. Under their pressure and counter-pressure, the administration can shape its action to a form which all the interests will accept and will co-operate in making effective. Democratic government in this way will shed most of its coercive aspects and become a great co-operative enterprise in which all groups share in the administration of those activities which concern them.

This proposal should not be too hastily branded as completely utopian. Trying to approach the administration *via* the political party, the legislature, and the political executive may involve a long and hazardous detour. There is little doubt that organs of direct consultation will increase in number and importance. Yet two cautions must be put. First, the experience of the United States with this kind of consultation is not wholly reassuring. Because of the number of independent boards and commissions and the inability of the President in recent years to co-ordinate and maintain control of all branches of the administration, administrators in the United States have had in many of their activities more freedom to respond to group pressures and to negotiate with the interests concerned than in Britain and Canada. In too many cases, the result has been that the most powerful

interests concerned with a branch of the administration have captured the administration for a time and diverted it to their purposes.

Secondly, the interests immediately and consciously concerned with a particular field of government action are not the only interests with a stake in the matter. It is often thought that the only interests concerned with the fixing of minimum wages and maximum hours of work are employers and employees. In fact, everyone who is concerned with the level of prices for goods or with health or education has a lively interest in the matter. It is almost impossible to get all the interests with a stake in administrative decisions fairly represented. For this reason, control through the political parties, through the legislature and the political executive which alone represent the broad general and unorganized interests, is extremely important.

If administrative discretion is to be kept under control, a combination of the older, more indirect, methods of control through the legislature and the political executive, and the newer, more direct, consultation between the administration and the interests affected must be used. The means by which the legislature and the cabinet or President control administration have been described in earlier chapters. It remains to indicate briefly how the interested sections of the public make contact with the administration.

In Britain and the United States, when subordinate legislation is to be framed, it is standard practice for the department or administrative agency which has the matter in hand to consult the organized interests. Copies of the proposed regulations are circulated to the associations and their comments are invited. In the United States, it is common to arrange a conference or public hearing where all sides can make representations. In this way, the administration gets expert knowledge of the complexities it is expected to regulate. It may learn that certain of the proposed regulations are really unworkable, that others rouse violent opposition and attract little support. It hears all the objections before it acts, and decides what concessions or modifications it can afford to make. On the other hand,

the fact that the interests are consulted disposes them to co-operate even when the decision goes against them. And after the regulations have been enacted and put into effect, the interests keep in touch with the administration with complaints and suggestions. When a considerable experience of their operation has accumulated, discussions looking to their revision may be held. There is here a complex interaction between rulers and ruled.

In a less formal way through correspondence and interview with officials, pressure groups make representations about administrative decisions in particular cases. In the United States, officials often attend meetings and conventions of the various associations, addressing them on the policy and work of their department or agency. This is rarely done in Britain and Canada where officials are subject to closer check by the political executive, and generally refuse to discuss matters of policy in public. However, it was widely remarked in Canada in World War II that officials operating the wartime controls had little reluctance in meeting and discussing matters of policy with the groups subject to their regulations. It is not yet clear whether this was merely an emergency phenomenon or whether it marked the beginning of closer collaboration between the administrator and his public. It is clear, however, that it was a response to the wide scope and complexity of governmental regulation under the conditions of war.

Wherever possible, the methods used by pressure groups to influence the legislature are used to urge their views on the administration. These methods are mostly informal and have not yet hardened into well-established practice. There is, however, one recurring pattern of consultation which is widely used—the advisory committee. This device has been described optimistically as the democratic answer to the challenge of the corporate state. The corporate state meets the problem discussed in this chapter by formally turning over the functions of government to associations or corporations directly representative of interests. In the process, democracy disappears. The advisory committee, it is alleged, meets the need for giving representation to and

getting co-operation from the interest groups without destroying democracy. How is this accomplished?

When the government is faced with a complex and arduous task of administration aimed at realizing some objective of the positive state, it can set up a committee representative of the interests affected to advise the administrators. In so far as the interests are organized in active associations, persons who play leading roles in the associations can be put on the committee. Interests which are not organized can also be given representation. For example, a number of persons can be appointed to the committee to speak for consumers or for the general public. An advisory committee on railway regulation, for example, would give representation to railway management, trade unions, and to a wide range of interests which ship and receive goods by railway. Such committees, like the British monarch, have influence but no power to say what the administration shall do. They have the right to advise, to be consulted, and to warn. If they do their job, administration will be carried on under the watchful eye of representatives of those who are directly interested in what is being done.

Through advisory committees, the administration can get quickly and in advance the reactions of various sections of the public on what it proposes to do. It can tap the practical experience and the expert knowledge which are essential to making governmental regulation of complex affairs practicable. By consultation and discussion, it can also explain to the representatives of various groups what ends and purposes the government is trying to accomplish. In so far as it succeeds in educating these representatives they, in turn, will carry the explanations to their membership and the chances of getting co-operation from those who are to be regulated are increased. While the member of the legislature, among other duties, maintains liaison between the government and a territorial constituency, the member of the advisory committee maintains liaison between the government and a functional constituency.

The positive state cannot accomplish what it is trying to do unless it gets widespread co-operation as well as general

acquiescence from the public. The advisory committee is calculated to improve the quality of administration, to foster an atmosphere of co-operation and to make possible continuous scrutiny of the exercise of discretionary administrative powers. It is on these grounds that the advisory committee is sometimes put forward as the democratic answer to the corporate state.

Advisory committees are now widely used as instruments of the administrative process in Britain, the United States, and Canada and reliance on them is increasing. Generally, they are designed to give representation to interests, organized or unorganized. However, particular persons are often appointed solely because they possess knowledge which the government hopes to be able to use. Advisory committees are useful for the purposes indicated but they cannot be regarded as an adequate solution for the problems raised in this chapter. In practice, there is continual difficulty in getting able persons to accept membership and take an active interest in the work of the committee. This arises mainly from the fact that the committees are advisory only; they have no power to insist on their recommendations being accepted, and interest therefore tends to flag. It can be maintained perhaps if the administration shows itself willing to accept any unanimous recommendation. But any such practice would turn the substance of power over to the advisory committee and this the administration cannot do. It takes great skill on the part of the administration to get useful results from advisory committees.

The truth is that the organized interests want power and not merely influence in the matters that affect them. If provision is made by the legislature for the government to intervene in the struggle of conflicting group interests, those group interests want to have some share in the control of the administrative agency which tries to regulate the conflict. They have met with some success in this claim. For example, in Canada and the United States, it is quite common for administrative agencies which regulate employer-employee relationships to be composed of equal numbers of representatives of employers and employees with or without provision

for a neutral chairman or other members representing general public interests. Where the government undertakes to confer benefits on a particular organized interest, that interest wants to administer the scheme itself. So when the legislature provides for compulsory marketing of agricultural produce through a marketing board, the compulsory powers which only the legislature can confer are often delegated to boards mainly composed of producers of the particular products concerned. There is a marked tendency for the most powerful interests to try to capture the administration and turn the administrative process to their own purposes.

THE SIGNIFICANCE OF THE ADMINISTRATIVE PROCESS

This is not necessarily objectionable where the interests which get control are the only interests with a stake in the matter. However, this can only rarely be true. As we have already seen, there are generally wider interests involved. The existence of wider interests which are likely to be prejudiced when administration is diverted to serve narrow and immediate interests is the reason for insisting on the primacy of control through the political parties, the legislature, and the political executive. It is also the reason for the demand, so insistent in the nineteenth century, that civil servants should be neutral tools obeying the hand of the legislature and political executive. The legislature and executive, it was contended, expressed adequately the common good and the national interest and there was no place for the imaginative civil servant with ideas of his own. Today, by contrast, there is a wide demand that civil servants have a positive constructive attitude towards their work, putting energy and even passion into the accomplishment of great tasks.

This reversal of attitude towards the civil servant is the clearest possible indication of the great change wrought by the rapid growth of governmental functions and the development of the administrative process. Legislatures and executives can no longer express the full content of public policy. The officials are given discretion to expound it in detail. They need, therefore, knowledge, imagination, and a strong will if much is to be accomplished. Yet when civil servants give a marked display of these qualities in their daily work

they are accused in many quarters of despotic ambitions. The question remains acute how civil servants can be genuinely creative and still kept under control. The administrative process as sketched here is the result of tentative groping in the last thirty years for an answer to this question.

It must be remembered, of course, that the civil servants who have a substantial discretion to exercise and who are expected to be genuinely creative are very few in number. They are generally senior officials standing close to the top of the hierarchy in each department. The vast majority of civil servants are, as the last chapter indicates, cogs in an impersonal organization, firmly clamped in a restricting routine with little chance to follow their inclinations or sympathies in their work. Indeed, it seems to be a general tendency in large-scale organization to impose a confining discipline on the many and to make overwhelming demands on a few for creative thought and action. The discretionary powers lodged with a few administrators merit the attention given to them here because the decisions they are expected to make are vitally important decisions. More and more the decisions taken in the course of administration affect the character of community life and the basic terms on which economic and social groups in the community live together.

Accordingly, we often hear the charge that the higher officials of the civil service really govern the country. There is no doubt that the political executive relies considerably on these officials for suggestions on policy, on what to do in the public interest. But the final decisions must always rest with the political executive which is ultimately responsible to the electorate. The political executive must retain the support of a political party and it must take account of the views of organized pressure groups. The civil service is drawing closer to the formulation of policy but it is still a long way from governing the country. It is, however, undoubtedly true that if government is to be all things to all men, the executive (in the broad sense including President or cabinet, and civil service) must be vigorous, imaginative, and possessed of wide powers. The unsolved problem is how to maintain a powerful executive and at the same time to ensure its continued responsibility to the governed.

All the previous exposition and discussion has been meant to converge on this point. At the beginning, it was stated that the essence of liberal democracy is a determination that government shall be servant and not master. The constitutions under consideration were framed for that purpose in a day when little was expected of governments. It was explained that the fundamental role of political parties is to enable the governed to change their rulers peacefully, to keep power contingent on their approval, and to construct electoral majorities which will support certain general lines of governmental action.

The great expansion in governmental functions in the last fifty years was sketched and asserted to have imposed great strain on the constitutions in question. In particular, it was seen that the tasks of the legislature and executive have been complicated immensely by the new burdens. A legal and judicial system whose procedures and traditions were firmly fixed before the great expansion in governmental functions and designed to support a negative rather than a positive conception of government was seen to be unsuited on a number of points for meeting present-day demands. The rise of pressure groups, the tendency to splintering of political parties, and the widespread dissatisfaction with the present system of representation were traced to the same source. The principal, although not the sole, effort to adjust these constitutions to the radically changed conception of the appropriate functions of government has been the development of the administrative process.

However, if we are to appreciate the full impact of the growth of governmental functions on our political systems, the matter cannot be left at this point. The influences which have expanded the sphere of governmental action have also had pronounced centralizing tendencies. They have tended to shift to the central governments functions formerly carried out by municipal governments. In the United States and Canada, they have also tended to enlarge the functions of the national governments at the expense of state and provincial governments. Accordingly, it is necessary to look at the place of federalism and local government in the liberal democratic constitutions.

CHAPTER XIII

FEDERALISM

THERE are a number of ways in which separate political communities can come together for common purposes. When several states confer together and agree on a common course of action in certain specified circumstances such as resistance to a common enemy, they are bound together by treaty or alliance. When they go one step further and set up a more or less permanent body of delegates or ambassadors to make detailed recommendations for carrying out the treaty or implementing the alliance, their association together is called a confederation. Such was the Congress finally set up by the American colonies in 1781 under the Articles of Confederation to fight the war against Britain. In a confederation, the common central body is merely a committee for deliberating and advising the separate members. It has no power over the separate states in the association or over the citizens of these states. A confederation is little more than a "firm league of friendship," from which the member states have a right to withdraw.

The next further step is to give irrevocably to the common central body some portion of the authority hitherto exercised by each of the member states on its own account. When this is done, the central body becomes a government with power to act independently of its own volition and not merely a council of ambassadors. A new state comes into existence to which the citizens of the member states owe an allegiance and a duty of obedience. Such are the United States of America brought into existence by the constitution of 1789 and the Dominion of Canada created by Confederation in 1867. Such unions are federal unions or federations. The member states or provinces are joined together not by treaty but by a constitution from which they have no right to withdraw. It is a marriage and not merely a casual alliance.

Yet, at the beginning at least, a federal union is merely a marriage of convenience—a practical business-like arrangement with no sentimental nonsense. The parties insist on retaining their distinct identities and personalities; they do not become one flesh. Of course, with the passing of time and the running of a common household, the marriage of convenience may be transformed into the kind of marriage that is made in heaven, where the identities of the several states are merged in an indissolubly united nation.

If and when this happens, the desire for a genuinely independent status in the several participating states will probably disappear. If so, conditions will be ripe for the last step in political unification, the disappearance of autonomous units and the reposing of all final governmental authority in a single central government. This is called the unitary state, of which Great Britain, incorporating the once independent communities of England, Wales, and Scotland, is an example.

Why do separate political communities when uniting together sometimes prefer a federal to a unitary form of government? A federal system is always a compromise between two distinct, and sometimes conflicting, sets of political forces. First, there are the pressing common interests and purposes shared by the several states or provinces. The American colonies on the Atlantic seaboard had just won their independence from Britain and wanted to secure themselves against the assaults of any European imperialism. The British colonies in North America in 1867 feared the aggrandizement of the United States which had emerged from the Civil War as a great military power. Such interests and purposes, among others, can only be protected by presenting a united front. They demand a union.

Secondly, there is the desire of each of the uniting communities to maintain its identity and a large measure of independence. In part, this desire springs from the same mysterious sources as national pride and national exclusiveness. Robert E. Lee, offered the command of the Northern Army at the outbreak of the Civil War, refused it saying he

could not draw sword against his native state, Virginia. His first allegiance was to Virginia and not to the United States. In part, the desire springs from very practical considerations. The conditions of life and the character of the people as moulded by history and the physical environment vary greatly in the states or provinces contemplating union.

No government which fails to take account of these differences will ever be regarded as satisfactory. A government which is locally controlled is far more sensitive to the factors of uniqueness than is a central national government which is far away and preoccupied with more general issues. The desire to limit the reach of a distant government is the main reason for a federal system. Lacking the urgent common interests, there would, of course, be no union at all. But lacking the insistence on a guaranteed sphere of independence for each of the uniting communities, there would be no reason for a partial union—no case at all for a federal form of government.

Federalism therefore is a dual form of government calculated to reconcile unity with diversity. It provides for a common government for common purposes, generally called the federal, or national, government. In the beginning, the common purposes mostly relate to external matters. The aim is to have a common policy vis-à-vis the rest of the world. The federal scheme also provides for the continuance of the governments of the several states or provinces in the federation preserving for them, against the world and against the common government they have set up, control of most matters of internal policy. The most important aspect of a federal system then is the distribution of powers and authority between the common government on the one hand, and the state or provincial governments on the other. Hoping to set at rest all later questioning of what this distribution really is, it is written into the constitution. This distribution of powers firmly established in a written constitution is the distinctive feature of federalism and makes many aspects of politics and government in the United States and Canada markedly different from those of Britain, a unitary state.

THE FEDERAL DISTRIBUTION OF POWERS IN CANADA AND THE UNITED STATES

In considering the federal systems of the United States and Canada, the distribution of powers as laid down in the respective constitutions must be looked at first. It has already been noted that the constitution of the United States limits the powers of all governments and puts certain matters beyond the reach of either the state or federal governments. These matters are said to be reserved to the people. Leaving them aside, some important features of the distribution may be pointed out. Thirteen fully independent states met and agreed to give up certain specified powers to the common government. They insisted on retaining everything they did not expressly give away. So the national government has only the specifically granted or delegated powers, and those which are necessarily implied in order to give effect to those expressly granted. The constitution nowhere enumerates the powers reserved to the states. The states enjoy all the powers not granted to the federal government, expressly prohibited to the states, or reserved to the people. This was made clear by the passing of the Tenth Amendment in 1791.

Article I, section 8, states the main powers granted to the United States. Many of these powers relate, directly or indirectly, to external matters: the raising and supporting of armies and navies, the declaring and prosecuting of wars, the regulation of commerce with foreign nations. In internal matters, the powers of the United States were mostly restricted to the promotion of internal trade and commerce. It was necessary to guard against the states erecting tariff barriers against one another. The federal government accordingly was given power to regulate commerce among the several states. This famous interstate commerce clause, as it is called, has been the basis of much of the great extension of federal power through judicial interpretation.

Because a common currency and a common standard of weights and measures were needed to promote internal trade and commerce, the federal government was authorized to coin money and to fix its value, and to fix the standards

of weights and measures. The powers to establish post-offices and post roads, and to grant patents and copyright, were, in part, aimed at the same purpose of facilitating commerce. The only power which might be thought to have wide general application in internal matters is the one authorizing the federal government "to provide for the general welfare of the United States" but the context in which it appears makes it doubtful whether any extensive power was intended to be granted thereby.

A few powers are shared by both state and federal government: the levying of taxes, the borrowing of money, and the establishment of courts. Because the powers of the states are in the form of an unspecified residue, no enumeration would be likely to state them exhaustively. The making and altering of the criminal law and the laws of marriage and divorce are merely well-known instances of the power of the states to make diverse laws as they see fit. In fact, the states appear to be the sole authorities on most aspects of property, trade and commerce, and personal relationships. At least, so one would infer from a reading of section 8 of Article I and the Tenth Amendment.

When the terms of union of the British colonies in North America were under discussion in the eighteen-sixties, seventy-five years of experience under the federal constitution of the United States were available for guidance. This experience had just culminated in a civil war which threatened to destroy the Union. The immediate, if not the underlying, cause of the Civil War had been the claim by the southern states of the right to withdraw from the Union. Because the powers of the federal government were specific powers delegated to it by the states, the seceding states claimed the right to withdraw the delegation.

The Fathers of Confederation,¹ the framers of the Canadian federation, wanted to make it clear from the beginning that such a claim had no semblance of right in the Canadian

¹The Canadian union of provinces established in 1867 has always been described as "Confederation." This is an incorrect use of the term but it is sanctified by usage. It must be understood, however, that the Canadian union is a federal union and not merely a confederation.

federation. Indeed, some of them like Sir John A. Macdonald did not want a federal system at all but a unitary state with all authority in one national central government. So the British North America Act, the statute of the British Parliament which established the Canadian federal system, tried to limit and qualify the independence of the provinces more sharply than the American constitution had limited the states. It was provided that the Lieutenant-Governors, the formal heads of the provincial governments, should be appointed by the federal government and that they should have the power to reserve provincial legislation for the pleasure of the federal cabinet. Also, the federal cabinet was given power to disallow within a limited time any laws enacted by the provincial legislatures.² Most important, the opening paragraph of section 91 of the Act, which authorizes the Dominion Parliament "to make laws for the peace, order and good government of Canada" on all matters not exclusively reserved to the provincial legislatures, was intended to make it clear that the residuary powers, the powers not expressly conferred on either Dominion or province, rested with the Dominion and that the provinces were to have certain specified powers (set out in section 92) and no more. All these provisions were calculated to show that the Dominion did not derive its powers from delegation by the provinces. No room was left for the provinces to argue that their independent status included the right to withdraw from the union.

The powers which the Dominion was to exercise exclusively were set out in section 91. The twenty-nine headings in this section which purport to be illustrative only and not a definitive statement of the scope of Dominion power covered a wider range of matters than the corresponding list of federal powers in the constitution of the United States. They covered such aspects of external relations as a British dependency could expect to control on its own account.

²This power is distinct from, and not to be confused with, the much narrower power of the courts to declare null and void acts of the provincial legislatures which purport to deal with matters reserved to the Dominion Parliament under section 91.

They went further than the constitution of the United States in conferring authority over commercial matters on the federal government. In addition to currency and coinage, they included the power to regulate banking, bills of exchange, interest, and legal tender. Furthermore, in authorizing the Dominion to make laws for "the regulation of trade and commerce," they seemed to confer a wide power of regulating business and commerce. By an exception to section 92.10, the Dominion was given wide control over the transportation and communications industries. By section 121, the provincial legislatures were forbidden to interfere with freedom of trade between the different provinces. Reflection on these and other powers enumerated in section 91 indicates that the Dominion was intended to have a wider authority in relation to economic life than the federal government in the United States.

Experience in the United States had shown that it was extremely unsatisfactory for the separate states to have exclusive control over the criminal law and over marriage and divorce. Accordingly, these matters, excluding the forms of the marriage ceremony which were left for provincial determination, were put in the sole control of the Dominion. On the other hand, to avoid the duplication of judicial institutions found in the United States, the power to constitute courts for the enforcement of both Dominion and provincial law was given to the provinces.

Concurrent, or shared, powers to levy taxes and borrow money were conferred on both the provinces and the Dominion. In addition, concurrent powers over agriculture and immigration were provided for in section 95.

This contrast is by no means an exhaustive discussion of the division of powers between the Dominion and the provinces. It is designed mainly to show that the Fathers of Confederation intended, in the light of American experience, to strengthen the Dominion *vis-à-vis* the provinces. But, in social and economic matters, what men plan and what ensues are often quite different things. Both these constitutions have been interpreted by the courts on almost

innumerable occasions since their adoption and it would be difficult for anyone, looking only at the text of the constitutions, to realize that they mean what the courts have declared them to mean.

Except for one significant reversal of the general trend in the years immediately before the Civil War, the Supreme Court of the United States has steadily enlarged the powers of the federal government by interpretations given in disputes coming before it. By 1939, federal authority had been stretched to the point where it could employ a million civil servants on its legitimate peace-time concerns. The Supreme Court, aided by the arbitrament of arms in the Civil War, has confirmed the indissolubility of the Union and enormously strengthened the position of the federal government vis-à-vis the states. Largely, but by no means entirely, through a liberal interpretation of the interstate commerce clause, Congress has been given a wide power to regulate trade and commerce and economic life.

Judicial interpretation of the distribution of powers in the Canadian constitution has gone in the opposite direction. The decisions of the Privy Council over a period of fifty years have almost denuded of meaning the general, or residuary, clause contained in the opening paragraph of section 91, except for periods of great national emergency. It is by reliance on this clause in time of war that the Dominion substantially supersedes the provincial governments. In times of peace, however, the Dominion has been denied any substantial power under it. Thus the peace-time powers of the Dominion are almost wholly restricted to the matters specifically enumerated in section 91. Even here, the most general clause "regulation of trade and commerce," has been very narrowly interpreted. Most laws for regulating economic life such as the manner in which particular trades and industries conduct their business have been held to be beyond the power of the Dominion and to be solely reserved to the provinces under section 92.13, "property and civil rights in the province." Legislation providing for social services and social insurance has also been held to be a matter for the provinces under property and civil rights.

Indeed, section 92.13 has been so widely interpreted, and the general clause of section 91 so narrowly construed, that it can now be said, without any great exaggeration, that the residuary power rests with the provinces and not with the Dominion. The Privy Council has magnified the provinces while the Supreme Court of the United States has magnified the federal government. Although the Privy Council has confirmed the provinces in a wide range of powers, it has never said anything to support the right of the provinces to withdraw from Confederation. Nor has any province ever seriously claimed it. The high-water mark of provincialism is the claim that Confederation is a compact between the provinces and cannot be modified without the consent of all the provinces.

It must not be thought, however, that the activities of the Dominion government in 1939 were less numerous and important than they were in, say 1875. On the contrary, they were vastly greater, having grown steadily since the beginning of the twentieth century. The Dominion did not attempt, in the early years of Confederation, to exercise all the powers which section 91 conferred on it. It was only when it began, from about 1900 on, to expand its activities that it ran into restrictive interpretations by the Privy Council. The decisions of the Privy Council have not prevented the Dominion from enlarging its activities but they have been progressively hampering as the demands for Dominion action grew. The Dominion could not have carried out during the depression of the nineteen-thirties measures comparable to the New Deal in the United States because the British North America Act, as interpreted by the Privy Council, reserved most of such measures to the provinces. The activities of the Dominion government have grown but not comparably to those of the federal government in the United States.

CO-OPERATION AND CONFLICT WITHIN A FEDERAL SYSTEM

The essential feature of a federal system is the co-existence of two governments with authority over the same territory and the same persons. Each of these governments is inde-

pendent of the other. Each has a sphere in which it alone can rule and cannot be overruled by the other. At the launching of the two federal systems under discussion, it was thought that the sphere of the federal government, on the one hand, and the sphere of the state and provincial governments, on the other, could easily be kept separate, that each of the governments would operate in an almost water-tight compartment. The matters committed to the federal government were few and appeared not to bear very directly on life in the different states and provinces.³ The latter would control their own destinies without serious clash with one another or with the federal authority.

This expectation too has been falsified by events. The Civil War in the United States revealed how the states could become dissatisfied with the policies of one another's governments and how one group of states could become so incensed with the policies of the federal government as to secede from the union. No subsequent issue in either country has threatened civil war but it has become more difficult, with each succeeding decade, for each government in the federation to carry on in isolation. There are a growing number of interstate and federal-state co-operative arrangements. These arrangements, or the lack of them, are often attended by bickering and quarrelling between the different governments. To overcome the squabbling, the states are counselled either to have more and better co-operation, or to hand over further powers to the federal government so that one government will have control of the whole matter at issue. If present-day federalism is to be understood, it is necessary to see how this has come about.

The American federation was founded when the Industrial Revolution was just beginning, and the Canadian Dominion was established before the full consequences of the Industrial Revolution had become apparent. To take only one aspect of it, the revolution in transportation and communications was still to come in 1789, and it was still in its early stages in 1867. In these circumstances, the states were of necessity

³Henceforth, in this chapter, the word "state" is to be understood to include "province," unless the context indicates the contrary.

very largely insulated compartments. People lived, not by buying and selling in distant markets beyond the boundaries of their own state, but by producing practically all their needs either on the family farm or in the local community close to home.

Agriculture was still the basic industry and principally concerned with local markets. The manufacturing industries were still small and mainly occupied in supplying a local demand. Strict accuracy would compel many important qualifications on the description just given. Intercolonial and foreign trade was important on the Atlantic seaboard in 1789 and in the remaining British colonies in North America in 1867, but it had not yet changed the general pattern of economic and social life. Most of the states, at the time the American federations were being launched, were relatively self-contained.

Given security from foreign aggression, events in the sister states and in other parts of the world had but a limited impact on each state. Federal union aimed at providing security from foreign intervention and did so successfully. With the principal conditions of life determined within their own boundaries, the states could have a genuine independence. There followed in each case a golden age of states' rights and provincial autonomy.

All the while, however, the onrushing economic transformation of the modern world was preparing the decline of this golden age. Free trade within the federation, improved transportation facilities, and rapid industrial and commercial expansion led to economic integration within the federation. In the place of the largely self-contained economies of the separate units in the federation, there grew a single unified national economy. Independence gave way to interdependence. Today, if farmers in the agricultural states cannot sell their produce profitably, workmen in the predominantly manufacturing states suffer unemployment, companies fail to pay their expected annual dividends, mortgage payments due to persons in still other states go into arrears. The order of dependence of such events on one another will vary but it is at least clear that events which take place in one part of

the federation have an impact in every other part. In fact, each of the states has become part of a larger whole with no direct power over what happens to the whole.

This momentous development does not of itself alone bring the several governments in the federation into closer contact, co-operation, or conflict. It was not the mere fact of the development of a world economy in the nineteenth century which brought national governments into conflict and war in the twentieth century. It was rather the fact that the people demanded, whether for adequate reasons or not, that their national governments should intervene in economic and social matters that turned economic rivalries into political conflicts.

So, within the federation, if governmental functions had remained limited to those of the mid-nineteenth century, the several governments would not always be coming across one another's paths as they are today. It is the immense increase in governmental activities which produces intergovernmental disputes, demands for better co-operation between them, and arguments for enlarging the powers of the federal government, the government whose arm has the longest reach.

Each government working within the sphere assigned to it by the constitution takes action which has repercussions in the spheres of the others. The federal government through its control of tariffs and currency and credit can affect economic conditions in each of the member states. There is scarcely any action it can take on these matters nowadays which does not affect some states favourably and others adversely. This was always true to some extent but it is more marked now than ever before. On the other hand, the actions taken, or neglected to be taken, by one or all of the states may affect profoundly the matters with which the federal government has to deal.

Equally, action taken by one state government may affect some or all of the sister states. Government regulations covering the grading and marketing of produce in the state almost inevitably affect the trade of other states. Laws passed by one state to relieve debt-ridden farmers in that state affect creditor interests in other states. Moreover,

there are many matters on which the government of one state cannot hope to take effective action because some of the factors are beyond its control. If one state makes a levy on the industries within its boundaries for the maintenance of an unemployment insurance fund, it takes the risk that industries will shun it in favour of other states which do not follow suit, and where therefore the costs of production are lower. If the federal government is restricting credit, state governments cannot hope to take successful measures for expanding production and employment.

These instances, which could be multiplied, show that there are many matters in which the governments in the federation should act in concert and unison. Failure to do so causes friction and inefficiency. To take a Canadian example, the Dominion government controls railway policy and subsidizes the railways (by meeting the deficit on the operations of the Canadian National Railways). The provinces build the highways and determine, through motor licences and gasoline tax, the conditions on which motor transport can use them. For the past two decades or more, the provinces have been subsidizing motor transport by failing to tax motor transport heavily enough to cover its proportionate share of the cost of construction and upkeep of highways. Motor transport takes advantage of the low costs of operation to take business away from the railways and thus to increase deficits on railway operation. Such a situation argues for a single co-ordinated policy of regulating all transportation facilities. This can be had only in one of two ways. Either all governments must co-operate closely in the matter or all authority over the regulation of transport must be transferred to the federal government.

Experience has shown that it is extraordinarily difficult for all or most of the governments in the federation to co-operate steadily over an extended period. Each government necessarily responds to the views of the public interest held by the ruling political party and the combination of interests supporting that party. Different parties and different combinations of interests may hold power in the different states at the same time. Interstate and federal-

state co-operation have been reasonably satisfactory in a number of matters but they have been mostly matters which could be settled once for all and did not require continuous administration. In the critical field of economic life, regulation must be continuous and it must be revised from time to time to meet changing circumstances. Also economic regulation almost always raises sharp conflicts of interests. Such conflicts are the stuff of present-day politics and the different governments in the federation are more likely to differ than to agree.

If co-operation between governments will not meet the need, the alternative is to give authority to regulate all forms of transport, but not necessarily the building of highways, to the federal government. With a single government in control, it can be hoped that a unified coherent policy can be worked out. The same argument applies in numerous fields. Because the provinces could not get together for concerted action in establishing separate unemployment insurance systems, they finally accepted an amendment to the British North America Act transferring power to establish unemployment insurance to the Dominion. The best way, perhaps the only way, to get marketing legislation which is uniform, non-discriminatory and fully effective is to have it enacted for the whole country by the federal legislature. In almost every field where the actions of one government have serious repercussions in the sphere of the others, the plausible solution is to give the matter over to the exclusive authority of the federal government.

THE TREND TOWARD CENTRALIZATION

Because the fields in which the various governments in the federation come across one another are now so numerous, many have concluded that federalism is outdated and obsolete. Because the separate states no longer have an independent economic life of their own, conditions beyond their control may at any time make their independence a sham. In fact, they become dependent on the federal authority. Whether or not this is correct, it is clear that a unified national economy under conditions of widespread

governmental activity and regulation strains towards political centralization.

It would not necessarily be so if we could reverse the trend to ever-greater governmental functions. But the present-day conviction is that business and social life generally must be extensively regulated by governments. When business is organized on a nation-wide scale with many businesses operating in every state, and when labour unions are national, if not international, in scope, the argument for nation-wide regulation of business and labour-capital relations is very strong. Such facts as these reveal the significance of the enlarged interpretation of federal powers by the Supreme Court of the United States. It is a response to a need that is felt. And there is consternation in many quarters in Canada because the Privy Council has denied rather than responded to this need.

Another urge to centralization is found in public finance. Here again the reasons are the same, the unification of the economy and the multiplying of governmental functions. In both Canada and the United States, many of the most expensive of the new functions of government are allotted to the states by the distribution of powers in the constitution. For example, highways, education, and the bulk of the social services are primarily their responsibilities. It is thought to be contrary to the interests of the country as a whole that there should be wide disparities in the number and quality of these services in the several states.

Unfortunately, the capacities of the different states to raise the revenues needed to maintain these services at a uniform level vary greatly. Some can maintain a high level of services at moderate rates of taxation while others cannot do so even at very high rates of taxation. That is because some states have prospered while others remain chronically poor relations. In most cases, the plight of the latter is largely due to the poverty or lack of variety of their natural resources. Their condition is aggravated, however, by centralizing tendencies in the economic system.

Within the free trade area which the federation maintains, industry and commerce tend to locate in the areas

richest in wealth and resources. Manufacturing gravitates to the areas with the best resources of raw materials, industrial skill, and power in form of coal or electricity. Yet the manufacturing industries distribute their products to, and draw their profits from, all parts of the country. The number of products which are nationally advertised is an index of the scope of this business. A similar centralization occurs in the distribution of products. Chain stores and mail order houses with head offices in a particular state do a nation-wide business drawing to one point profits which formerly were made and kept by local merchants all over the country. Also, the financial institutions (banks, insurance companies, and trust and loan companies) located in particular areas do business in all areas.

The net result is the pooling of wealth in the states already blessed by nature with rich resources or strategic position, enabling the governments of these states to tap the pools by corporation tax, income tax, and succession duties while the other state governments are denied comparable access to them. Thus the difficulties of the poorer states in finding tax revenues to support all the activities expected of them are intensified.

There is one government, however, which has ready access by taxation to all pools of wealth in the country, wherever found. That is the federal, or national, government. The poorer states which find it difficult to finance their activities, and other interests which want a high level of government services, are tempted to argue that corporation tax, income tax, and succession duties, the taxes which can skim the rich cream pooled by nation-wide business activity, should be solely in the hands of the national government. Economic centralization gives force to arguments for centralization of the taxation system. When the national government has collected large funds in this way, it should either make grants to the several states and provinces enabling each of them to maintain the desired level of government services or it should itself take over from the states the more costly functions of government and administer them.

If either course is actually adopted, it enhances the importance of the federal government and diminishes the autonomy and independence of the state governments. If it is decided to give the federal government the sole power to levy and collect these most fruitful taxes and then to distribute some portion or all of the annual fund so collected to the several state governments, it is almost inevitable that federal control will accompany the grants. If the sums are large in amount, as they must be to accomplish their purpose, the authority which takes the odium of collecting them will not give a completely free hand to other authorities in spending them. Control is usually secured by earmarking the grants for specific purposes such as highways, old age pensions, or unemployment relief. To earn the grant, the state governments must comply with the specifications laid down by the federal government covering the particular activity which is being aided.

In the United States and Canada, such grants-in-aid, as they are called, have been in use for many years aiding various activities carried on by the state and provincial governments.⁴ In 1939, in the United States, federal grants made up about 15 per cent of the total revenues of the state governments. There were times in Canada in the nineteen-thirties when the federal grants-in-aid made up one-third of the provincial revenues. In some measure then, depending on their amount, these grants require the state governments to dance to the tune of the federal government which selects the pieces to be played and prescribes the tempo and manner of execution.

This is not a serious interference with state independence as long as the aided activities are only a few of those in which the state governments are engaged. However, for reasons which cannot be gone into here, grants-in-aid have not thus far been signally successful in reducing the disparities between the financial positions of the various state governments. So there is a strong body of opinion which presses

⁴In Canada, they are in addition to, and not to be confused with, the unconditional Dominion grants or subsidies to the provinces provided for by the British North America Act.

for the other alternative of transferring some of the costly functions now performed by state governments to the federal government to be administered as well as financed by it. Such a course eases the financial difficulties of the governments of the poorer states and puts them in a better position to carry the functions which remain to them. In recent years, it has been followed in the allocation of sole responsibility for several of the new social security measures to the federal governments. In so far as it is followed, it adds to the power and prestige of the federal government.

AMENDMENT OF THE FEDERAL CONSTITUTION

It can be seen from the examples given that the great extension in the activities and expenditures of governments sets going many centralizing tendencies in federal systems. If these tendencies continue and if they accelerate as they have in the past thirty years, the maintenance of a genuine federal system with its separate and exclusive spheres of governmental power may become impossible. In fact, there are numerous reasons for caution in supporting or acquiescing in these tendencies, which will be considered later. For the moment, it is important to remember that this centralization cannot take place merely because an electoral majority, and Congress or Parliament, happen to be in favour of it. In many cases, the constitution stands in the way, ensuring to the separate states the sphere of power which they presently possess. Generally, proposals for enlarging the power and responsibilities of the federal government require amendments to the constitution.

Such amendments are not easily carried through. There are always elements in the community which resist even if they are no more than the state and provincial politicians who do not want to see the range of matters under their direct control narrowed. The richer states in the federation are generally reluctant to see the federal government move into the field of social security because this enables the poorer states to get services at their expense. In Canada, Quebec can be counted on to resist almost every increase of federal power because Quebec distrusts the use to which the

federal government will put such power. The English-speaking Protestant majority can dominate the federal government but it cannot control the government of Quebec. The citizens of federal states are increasingly involved in controversies over what amendments should be made to the constitution and in what ways.

There has been a wide variety of proposals for amendments in the United States. All suggest additions to the powers of the federal government. Some go to the point of proposing abolition of the existing states and regrouping them into a much smaller number of regions. In Canada, the strains on the federal system became so great in the nineteen-thirties that a royal commission was appointed to inquire into the desirability of constitutional amendments to reallocate the powers and responsibilities of the provinces and the Dominion. The Sirois Commission, appointed in 1937, gave two years of continuous study to the problems which had brought many provincial governments to the verge of bankruptcy and had caused unprecedented bickering between provincial and Dominion governments. Although they made some proposals for increasing the power of the Dominion to regulate economic life, their main recommendations were primarily financial. A summary of these under five headings indicates the trend of thought nowadays on federalism.

- (1) The Dominion government should take over from the provinces sole responsibility for the accumulated public debt of the provinces.
- (2) In consideration of this, the Dominion should have some control over future borrowing by provincial governments.
- (3) The provincial governments should be freed from, and the Dominion government solely fixed with, the costly responsibility for relieving unemployment.
- (4) In return for relief from the burdens of debt and unemployment, the provinces should surrender entirely to the Dominion three great instruments of taxation: personal income tax, corporation tax, and succession duties.

- (5) Those provincial governments which, after these adjustments, still had a gap between income and outgo should be given by the Dominion government an annual grant large enough to close the gap but subject to certain conditions designed to prevent abuse.

These recommendations illustrate sufficiently the centralizing tendencies referred to. The reception given to the proposals of the Commission also shows how hard it is to make any progress toward drastic amendment of a federal constitution. A Dominion-Provincial Conference was called in 1941 to consider the proposals but it broke up in disagreement, if not in disorder, before it really got down to serious discussion. Later, the greater part of the substance of the above proposals was agreed to by the provinces as temporary expedients of war-time finance. But the agreements expire shortly after the end of the war and Dominion-provincial relations remain as unsettled as before.

The methods prescribed for amending the constitution of the United States are not easy but they are at least clear. The difficulties of the Canadian federal system are magnified by the fact that there is no provision in the British North America Act or elsewhere which settles how Canadians are to set about amending that Act. As was explained earlier, certain necessary formalities are beyond doubt. The British North America Act can only be amended by the British Parliament and the British Parliament will always act on a request of the Dominion cabinet. Naturally, the Dominion cabinet will not make a request unless authorized by the Dominion Parliament. It is even clear that the Dominion Parliament would not presume to move an amendment which reduced the powers of the provinces until the approval of some at least of the provinces had been obtained. It is not clear how many of the provinces must consent or how that consent is to be obtained or how it is to be expressed. So whenever the desirability of any particular amendment is raised, discussion soon goes off on the procedure to be used for getting it.

There have been numerous amendments of the British North America Act which need not be discussed here because

they do not settle the vital issue as to what is to be done when one or more provinces object to a proposed amendment to reduce the powers of the provinces. It is more useful to look at some of the opposing views. Those who object, in general, to a reduction of the powers of the provinces tend to uphold a view known as the Compact Theory of Confederation. According to this theory, the constitution adopted in 1867 was a contract or treaty between the separate colonies which became parts of the new Dominion and, therefore, no change in the terms of the contract can be made without the consent of all the parties to it. In this view, the five provinces which later joined the original four are also parties to the contract. It is urged that no amendment reducing the powers of the provinces can be made without the consent of all the provinces.

This is essentially a legal argument but most competent lawyers would deny its validity. It is sufficient to note two, out of the several, points of effective criticism on legal grounds. First, the terms of union which were written into the British North America Act were finally settled by the British government. While they followed, in the main, the Quebec Resolutions, a draft of proposals for union agreed on by the political leaders of the British North American colonies in 1865, they varied from them in important respects, and these variations were never referred back to the colonial legislatures to see whether they agreed with them or not. In other words, there were important terms which were never part of any contract. Secondly, neither the Dominion nor the provinces of Ontario or Quebec could have been parties to any pre-Confederation contract, because they themselves did not exist prior to Confederation but were first brought into existence by it. Furthermore, it is doubtful whether either Nova Scotia or New Brunswick could be said to have been parties to any contract that might have been made because, in neither case, were even the Quebec Resolutions referred to the legislatures of these provinces. The legal argument falls to the ground.

However, if we speak in moral rather than strict legal terms, there is ground for saying that Confederation was a

compact, not between the several provinces but between the two races, English and French, which agreed to associate together in the Dominion of Canada on terms of mutual tolerance and respect. The most important reason for a federal union rather than a unitary one was that a unitary state was entirely unacceptable to the French-speaking Canadians. They were willing to come in only on condition that matters affecting language, religion, and basic social relationships were exclusively reserved to the provinces. It might not be a breach of contract but it would be a breach of faith to insist now on withdrawing such matters from the jurisdiction of the provinces without their consent.

This serves to explain another school of thought which holds that there are three different types of clauses in the British North America Act and that a separate method of amendment is appropriate to each. First, certain clauses, such as sections 53-4 prescribing how the Dominion Parliament shall proceed on financial legislation, deal only with the mechanics of the Dominion government and should therefore be amended on the motion of the Dominion Parliament without any consent of the provinces being required. Secondly, there are certain fundamental clauses affecting rights of race, language, or religion which should not be capable of amendment without the consent of all provinces. Such clauses are section 92.12 (solemnization of marriage), section 93 (education), and section 133 (guarantee of bilingualism in certain aspects of public life). Thirdly, all other clauses, including most of the provisions of sections 91 and 92, and most of the other sections in the Act as well, should require only the concurrence of the Dominion Parliament and a majority of the nine provinces. This is the middle view and is perhaps the most widely held.

At the other extreme, those who want it to be easy to enlarge the powers of the Dominion are inclined to urge that a simple majority in the Dominion Parliament should be the only prerequisite to asking the British Parliament for an amendment to most of the clauses of the British North America Act. But even here it is admitted that there are

certain fundamental minority rights which should not be modified without the consent of all provinces.

In fact, agreement on this particular point is pretty general. The real dispute is over its application in detail—which clauses protect fundamental rights and which do not. It will not be easy to get general agreement on it. In any direct sense, the transfer of complete authority over social security measures to the Dominion does not abridge any right of race, language, or religion. Indirectly, however, it may, because if people come to look to the Dominion government as the chief architect of their security against the various mischances of life, relationships within the family and the local community will be affected in numerous ways. In Quebec, in particular, the place of the Church in the social structure would likely be profoundly modified. Thus Quebec is disposed to contend that most of the headings of section 92 are necessary for the protection of minority rights. There is a wide variety of views as to what are the fundamental clauses of the British North America Act.

There are, of course, still other views as to the appropriate method of amendment. But enough has been said to show that different bodies of opinion come to different conclusions and make any early agreement on a method of amendment improbable. There is no prospect of an early end of the confusion arising in the Canadian federation from this source.

It has been suggested already that, in some quarters, federalism is regarded as obsolete. In many of the problems with which government is expected to deal, no one government in the federation can act effectively alone. The attempt to act in concert involves so much bickering and delay that many problems are not met at all. What each government does affects the conditions facing the others. They often work at cross-purposes and this adds to the friction. Politicians are not above using the distribution of powers to evade responsibility. To get elected to one of the legislatures in the federation they promise to do things which the constitution reserves to other legislatures, and then try to excuse themselves by blaming the constitution or the other govern-

ments in the federation. Therefore, it is urged that no reallocation of powers will sufficiently moderate the friction, the frustration, and evasion of responsibility. Those who hold to this view want the states to be abolished.

THE MONEY COST OF FEDERALISM

Associated with this conclusion are others who hold that there is a great deal of overlapping and duplication among the several governments adding unjustifiably to the ever mounting cost of government. They point to the fact that federal departments of labour, agriculture, health, and so on, are duplicated by state and provincial departments of the same name. They say that a country which has to support ten or fifty governments is ridiculously over-governed and that an immense reduction of government expenditures could be had by abandoning federalism altogether.

Whatever may be the case for abandoning federalism in favour of a unitary state, it cannot be rested on this latter ground. The numerous departments of labour, agriculture, and health are not mainly engaged in duplicating one another's efforts. Some duplication there is but its cost is negligible relative to the total expenditures of all governments in the federation. At any rate, this was the considered conclusion of the Sirois Commission which made a careful investigation of the charges of duplication and overlapping in the several governments in Canada.

Furthermore, the sums which would be saved by abolishing state and provincial governments are such a small fraction of total expenditures of governments in the federation that it would not be worth the upheaval involved. The reason for this is that the cost of upkeep of legislatures, of the internal housekeeping of government departments, and of the salaries of civil servants are but a small part of the current expenditures of governments nowadays. The great outlays of governments are in regulating community life and in providing expensive services for the public. The only really effective way to lower the cost of government is to abolish some of the numerous activities outlined in Chapter III. As long as these activities are to be maintained, the

abolition of nine or forty-eight legislatures and governmental establishments would not give any substantial relief to the taxpayer.

This can be proved by looking briefly at the expenditures of governments in the Canadian federation. In 1936, the current expenditures of the Dominion government were \$528 millions while the nine provincial governments spent a total of \$248 millions. It is important to see on what this \$248 millions was spent. It took \$80 millions to meet interest and other payments on the debts of the provincial governments arising from borrowing. Public education took \$27.5 millions, provincial highways \$21 millions. Services to agriculture and various expenditures on conservation and natural resources cost \$16 millions. Administration of justice and police claimed \$10.5 millions. Expenditures on public welfare amounted to \$72.5 millions. (Public welfare includes public health, upkeep of public institutions like mental hospitals and reformatories, mothers' allowances, workmen's compensation, old age pensions, unemployment relief, grants to hospitals, and child welfare.) Out of a total provincial expenditure of \$248 millions, the services listed above absorbed \$227.5 millions, leaving only \$20.5 millions to be accounted for.

Of this remaining sum, about \$3 millions went to the upkeep of the provincial legislatures, and salaries and expenses of provincial cabinet ministers. This leaves less than \$18 millions spent on what would be called in business language the running of the head-offices in the provincial capitals, viz., salaries of civil servants and the housekeeping expenses of the government departments.

It is clear therefore that the high cost of government is due to the services which governments maintain and not to the salaries of civil servants and the upkeep of legislatures. If provincial governments were entirely abolished and the services they now supply taken over by the Dominion, the \$227.5 millions spent on services would continue to be spent. The \$3 millions outlay on legislatures and provincial cabinet ministers would be saved. But by no means all of the \$18 millions now spent on provincial administration would be

saved. To administer the services transferred to it, the Dominion would find it necessary to enlarge its civil service very materially. It would find it necessary to establish branch offices in most of the provinces to give detailed supervision to these services. Perhaps economies in administration would make it possible to save about half of this item. So the abolition of the provinces in 1936 would not likely have effected a reduction of more than \$15 millions in total governmental expenditures (Dominion and provincial) of \$776 millions. It would have given no perceptible relief to individual taxpayers. The cost of government cannot be reduced materially except by cutting down some of the costly services which governments supply.

It might be, of course, that abolition of the provinces and putting one government in unhampered control of the spheres of action divided between the provinces and the Dominion would greatly improve the efficiency of government services and thus lower their cost substantially. The net gain to be had from having a single authority to regulate transportation, for example, might run into millions. But, at best, the reduction in costs so achieved would be a very small proportion of the total government expenditures.

IS FEDERALISM OBSOLETE ?

The question whether the sprawling, poorly co-ordinated federal system is now obsolete, a mastodon blundering about in a streamlined age, is not so easily answered. The first consideration to be kept constantly in mind is that the prime cause of the present confusion in federal systems is the greatly augmented scope of governmental action. If governmental management of the life of the people in peace-time stays at the level we have experienced in World War II, there is little doubt that federalism is obsolete. The federal governments have run the war and decided almost everything connected with it.

The state governments remained in a condition of suspended animation with no substantial sphere of independent initiative. They continued to perform most of the functions they had performed at the outbreak of war but decisions

at Washington and Ottawa left them little independent choice as to what they would do. Peace-time governmental operations of war-time magnitude would equally have to be directed by a single central government. State and provincial governments might remain as agents for carrying out the decisions of the federal governments but they would cease to be principals operating on their own account.

However, if governmental activities can be stabilized at or around their immediate pre-war scope, there is still a great deal to be said for a federal system. The United States and Canada each cover half a continent. Few of the successful unitary states have covered an area greater than that covered by one of the larger states or provinces. It is extremely difficult for a single government to carry on a wide range of activities over so wide an area and carry them on effectively.

The difficulty does not arise merely from the size of the territory; in fact, modern means of transport and communication are overcoming the physical limitations of time and distance. It arises rather out of the diversity of conditions which mark the different parts of a continental country. It was pointed out early in the chapter that the conditions of life and the character of the people vary in the different states at the time of union. These differences are lessened as a common life is shared within the union over a considerable period of time but they still remain highly significant.

The significant differences have become, in most instances, regional rather than state or provincial in character. It would not be contended that present-day differences between the conditions of life in New Hampshire and Vermont, Georgia and Alabama, New Brunswick and Nova Scotia, Alberta and Saskatchewan are very marked. But there are distinctive differences between the New England region and the deep South, between the maritime region and the prairie region. Each of the federations in question is made up of a number of distinct regions. The people in each of these regions have common problems and a common outlook on many matters, and their problems and outlook differ markedly from those which form the identifying characteristics of other

regions. This is the point made by those who argue in the United States for the amalgamation of groups of states under a smaller number of regional governments. They are not arguing against federalism but for a drastic revision of its territorial pattern.

It may be that some such revision will prove to be necessary if federalism is to be rescued from its present difficulties. However, there is no large support for such a revision at present and no agreement at all on what states, or parts of states, should be combined in the new regions. Only one thing is obvious; provinces like Quebec which, as they stand, are distinct cultural entities would have to remain as they are. Whatever the outcome of suggestions of this kind, the important point for present purposes is the continuing diversity of conditions in a continental country.

If a continental country like the United States or Canada were ruled by a single central government, that government would not be able to adjust all the laws it would have to make and administer to the varying conditions of the different regions. Laws—and even rules and regulations made under them—have to be framed in general terms. In discussing the civil service we saw that, under democratic government at least, there is a general insistence that laws should be administered uniformly with very little discretionary adaptation to special circumstances. We also saw that there are deep underlying reasons for this characteristic of administration.

In fact, uniformity of law, and uniform enforcement of it, are highly desirable as long as the laws are aimed merely at generally acknowledged anti-social conduct. The definition of murder and its prescribed punishment should be the same everywhere and should be enforced impartially. But when government is regulating everyday life in great detail, diversity of rule and application to meet special circumstances is necessary. This is the reason for the development of the administrative process which, as we have seen, imposes a considerable strain on the constitutional safeguards of liberal democracy.

The level of minimum wages, the amount of the old age pension, the content of the public school curriculum should vary according to the general standard of living and the cultural and economic conditions of different areas. If general laws on these and a multitude of other matters were enacted and enforced uniformly across the country, there would be deep dissatisfaction over them almost everywhere. Uniformity in these circumstances is sterile, or disrupting, or both.

The reason for adopting federalism in the first place was to arrest the reach of a distant government which is not trusted to take account of unique circumstances in different areas. As long as the federation with its autonomous states continues to exist, the legislatures of these states adapt the laws, partially at least, to the special circumstances of particular areas. Consequently there is less need to rely on the administrative process and less strain on the constitutional safeguards than there would be if one central legislature made all the laws for the country.

Half a continent cannot be governed by a highly centralized machine in Ottawa or Washington. It would be necessary to try to decentralize administration by establishing regional offices under the direction of officials with discretion to adjust the laws to regional conditions. If any proof of this is required it is to be found in the growing recognition in Britain of the need for regional authorities which will stand midway between the municipal governments and the central government. Cautious experiments in this direction were begun during World War II.

If such expedients are desirable in a tight little island like Britain with a homogeneous population and no great diversity of conditions, they would be inevitable under the continental conditions of government in North America. If the decentralization of government which federalism provides were abandoned, it would become immediately necessary to try to restore it in another form by setting up regional branches of the national government.

The difficulty is, that as long as governments are kept under control by the governed, there must be fairly narrow

limits to discretionary adaptation of laws to special circumstances. The regional branches to which the central government would delegate some discretionary power could not be given enough discretion to make adequate adjustment. They could not begin to respond to the unique aspects of life in a particular region as fully as do the present state governments, each of which must follow the temper of its own particular electorate and does not need to concern itself with what is being done in other parts of the country except in a limited range of matters.

The inability of the regional offices of the national government to adjust uniform nation-wide laws to varying regional conditions is not the only difficulty. Many problems with which governments are expected to deal are peculiar to a particular region and do not require action on a national scale. The national government would either deal with these inadequately or ignore them entirely.

There are even now some matters over which federal governments have sole authority but which are of prime importance in only one or two states. For example, the Dominion Parliament has exclusive authority over sea-coast fisheries. This is necessary because sea-coast fisheries involve international negotiation and treaties which the national government alone can undertake. However, the only two provinces with a vital interest in sea-coast fisheries in the sense that they are the basis of livelihood of a substantial part of the population are Nova Scotia and British Columbia. These two provinces complain sharply that the Dominion government neglects the fisheries and misunderstands the problems of the industry.

In the past, at any rate, there has been much substance in the complaint. If one compares the range of services provided for agriculture and the amount of scientific knowledge brought to bear on agricultural problems by the Dominion with what the Dominion has done to assist the development of the fishing industry, the disparity is so marked as to require explanation. There are a number of explanations but most of them turn on one central consideration. Agriculture is an important industry in every province and

can claim at every stage a livelier interest and a larger sympathy at Ottawa than fisheries. What is a vital concern in all provinces will always have a prior claim to that which is of serious interest to one or two provinces only. Farmers will always have more votes in Dominion elections than fishermen.

Such a priority is not, in general, a just ground for criticism. But the fact that it exists, and is likely to continue to exist, does suggest that there should be, in a country of great diversities, provincial—or regional—governments. Wherever possible, these governments should have control over matters of unique concern to that area and they should have a substantial sphere of independent action. Where this is so, the electorates to which the governments are responsible will see to it that vital regional interests are not neglected. Energies will be harnessed to the tasks in hand and not exhausted in futile efforts to get distant governments to do what needs to be done.

So while there are some spheres in which federalism is inefficient, there are more in which decentralized autonomous governments are necessary to efficiency. On these grounds alone it might be concluded that federalism is not obsolete, although particular federal systems may badly need revision. The principal consideration in favour of federalism, however, has not yet been stated.

FEDERALISM AND DEMOCRACY

In Canada and the United States with their marked sectional differences, it is extremely doubtful whether democratic government could be maintained at all except through the device of federalism. Democracy has been defined as government by consent. It has been urged that the greatest problem in a democracy is to construct electoral majorities which can agree on what the government should do. The problem grows more acute as the number of decisions to be made in the political arena increase. If all these decisions had to be made in the national arena, so many diverging sectional interests would be brought face to face on so many issues that it would be impossible to get a majority in the

electorate or in the legislature which would agree on how all these issues were to be dealt with. Federal, or national, politics in the United States and Canada have been immensely simplified by the fact of a number of lesser political arenas in which a great many issues are settled without ever rising to the level of national politics at all.

It is not merely, or even mainly, that political squabbles are decentralized in the "insulated chambers" of the states. A lot of little fights may be as serious as one big one. The great triumph of federalism is that many matters which would cause the sharpest conflict if they were thrown into national politics cause little dissension when dealt with separately in each state. Ontario manages to settle educational policy for Ontario with relatively little disagreement. Quebec manages to do likewise for Quebec. Yet, if educational policy had to be worked out in national elections and by the Dominion Parliament for the whole country, the disagreement would be furious and the bitterness arising from it would radiate out into all aspects of Dominion affairs. Federalism enables many regional interests and idiosyncrasies to have their own way in their own areas without ever facing the necessity of reconciliation with other regional interests.

Even as things stand at present, the clash of sectional interests in Congress is very marked. It helps greatly to explain why Congress often cannot reach a majority decision on what should be done in the national interest without log-rolling. If everything that is done by government in the United States had to be determined by Congress, Congress would exhibit far less unity of purpose than it does now.

In Canada, the Dominion Parliament and government have been much blamed in the recent past for their failure to deal vigorously with serious matters such as the great depression of the nineteen-thirties. Their vacillation was not due merely to the constitutional limitations on the Dominion. It arose in part from the fact that deep cleavages among the Canadian people prevented them from producing electoral majorities which would support vigorous measures of a specific nature.

It might even be suggested that Mr. Mackenzie King has been able to govern long in Canada because he has been content to govern little. Other leaders like Mr. R. B. Bennett with more positive ideas could not win, or could not hold, the majorities needed to support their programme. The lack of national unity which is so obvious at times in Washington and Ottawa would not be cured but intensified by abolishing the federal system.

The clearest concrete illustration appears in the course of events in Canada in time of war. Twentieth-century wars are national enterprises which require the national government to regulate minutely the most intimate details of life. Under the pressure of war, Canada, for the time being, almost becomes a unitary state. But even the fear of a common enemy is not enough to overcome the basic cultural diversity in the country. Quebec and the rest of the country cannot go along together in prosecuting a total war without disagreements which threaten to create irreconcilable factions. Separatist movements spring from the fact that, in time of war, the common government asks everybody to agree about everything.

Abolition of the federal system would make what is now an expedient of war an every-day necessity. This would be disruptive in the extreme. While the war lasts, a number of divergences of sectional interests are kept in check only by a recognition of the overwhelming necessity of presenting a common front to the enemy. Once the war is over, the check ceases to operate. If it were not for the federal system, these divergences would clash in the national political arena and convulse the country as does the conscription issue in time of war.

It has already been pointed out that in the United States and Canada the national political parties are federations of state and provincial parties. Each national party appeals to and gets support from persons and groups of diverse interests and attitudes across the country. Each manages to hold its heterogeneous following together because, up until now, national politics have been concerned principally with matters of general interest throughout the country and do not

go to the heart of matters on which regional interests and attitudes diverge sharply. These latter matters are mostly within the purview of state and provincial politics. If, however, it were necessary within each national party to come to agreement on these divisive matters, the national parties would scarcely hold together.

Even now, a new party in Quebec is urging that Quebec must present a united front in national politics to protect her interests. If every item of what government is to do in relation to agriculture had to be decided in the national political arena in Canada, it is highly probable that an agrarian party devoted to safeguarding the interests of prairie agriculture would emerge. It will be remembered that after the First World War and largely as a result of it, such a party, the Progressive party, did appear. There is thus some ground for suggesting that the two-party system in national politics in the United States and Canada has been made possible by federalism and that if federalism goes, it will go too. If, as has been contended, democracy and the two-party system are closely related, it would follow that democracy and federalism too have intimate connections in countries of continental extent.

These are some of the reasons for suggesting a close connection between federalism and democracy. They fall short of conclusive proof. In any political situation, the factors involved are so numerous and so hard to estimate that all arguments and conclusions must be taken with a grain of salt. On the other hand, there does not appear to be any adequate ground for thinking that federalism is obsolete. It seems advisable to try to patch up the federal system. Any satisfactory patching, however, is likely to involve an increase in the powers of the federal government. There are a number of pressing problems of nation-wide scope which can only be dealt with adequately by action on a national scale.

Also, when we say that people have come to think of themselves as Americans or Canadians as well as citizens of particular states or provinces, we mean that they have become conscious of sharing a wider range of common

interests with all their fellow citizens throughout the country. It is natural that they should look to the national government to protect and further these interests.

As nationalism grows in strength, the particularism which marks the early stages of a federal system diminishes. But this point also must not be pressed too far. There is no agreement as to how far nationalism has overcome particularism in the United States and Canada. In so far as history affords any guide, it suggests that the creation of genuinely united nations out of heterogeneous populations is a long, slow process.

It is not possible here to outline the structure of the state and provincial governments. Fortunately, it is not necessary, for present purposes, to do so. The main features of state constitutions and state governments in the United States are similar to those found in the federal constitution and government. Likewise, provincial political institutions in Canada are modelled on the British and Dominion pattern. The main point to remember is the one already stressed. The existence of numerous state and provincial governments in Canada and the United States gives government, as a whole, a different character than in Britain and raises a number of special types of political problems from which British politics are free.

CHAPTER XIV

LOCAL GOVERNMENT

UP to this point, we have been considering central governments which rule a wide territory operating from a single centre or capital. Even the state and provincial governments in a federal system are central governments in this sense. It will be convenient here to refer to all central governments of whatever kind as senior governments, thus distinguishing them from a very numerous group of subordinate, or junior, governments, each of which has a limited authority in a very narrow locality.

Central governments have never been able to carry on all the activities wanted of government. They have been compelled to rely on a network of local governments which in the aggregate can scarcely be said to be of lesser importance than the senior governments. Municipal government, as it is generally called in North America, touches the lives of more people at more points than do the senior governments. The character of local government and its relation to the senior governments are important factors affecting the working of government as a whole in any country.

THE CONSTITUTIONAL POSITION OF LOCAL GOVERNMENT

The place of local government in the constitutional framework must be considered first. Local government is subordinate government. The city or the county, unlike the states or provinces in a federation, has no assured sphere of autonomy which the constitution protects.¹ At any time, a law passed by the appropriate legislature may abolish local government, or modify or take away some of the powers

¹This statement is subject to some qualification in the United States where about one-third of the states have amended their constitutions to provide a defined sphere of "home rule" for the municipalities in the state. In these states, the state legislature cannot intervene in this sphere at all without first getting the "home rule" amendment of the constitution repealed.

exercised by it. The whole structure of local government in Britain, the United States, and Canada has been created by statute. Without such statutes, the government of the city, town, county, or township could not exist legally. It would have no power to require citizens to pay taxes or shovel off their sidewalks, and no duty to maintain and repair roads, lighting, and sewage systems. These statutes prescribe in abundant detail how local governments are to be set up, how they are to operate, and what powers and duties they are to have.

Thus, as far as the constitution is concerned, the local governments remain subject to the control of the legislature of the appropriate senior government. They have a sphere of operation in which they can do as they like, only because a discretion has been conferred on them by statute. The by-laws made by the municipal council are merely another kind of delegated or subordinate legislation and subject to the same controls and limitations as are the rules made by any of the subordinate law-making agencies described in Chapter xii. For example, if the city council makes a by-law requiring the banks to lend money to the needy at 3 per cent interest, no bank need obey the by-law and the courts would declare it to be invalid. The matters on which the city council has power to make laws are set out in detail in statutes of the legislature, and thus far regulation of banks and rates of interest has never been among them.

In Britain, the local governments derive their authority from, and the limits of their powers are marked out by, Parliament. In the United States and Canada, the constitution assigns local government exclusively to the states and provinces. In the United States, the clauses which assign powers to the federal authority are silent on this subject and therefore the power to create local governments and to exercise control over them is reserved to the states. In Canada, section 92.8 of the British North America Act gives to the provincial legislatures the exclusive power to make laws relating to "municipal institutions in the province."

In neither case has the federal government any direct power over the municipalities. They are the creatures of the state or province.²

It follows from this that the state or provincial legislatures cannot confer on the local governments powers which they themselves do not possess. In Canada, for example, railways and telephone and telegraph lines connecting two or more provinces are solely subject to regulation by the Dominion Parliament. So the provincial legislature cannot give municipalities power to make special by-laws regulating level crossings or compelling telegraph and telephone companies to put their lines under ground.

Indirectly, therefore, the Dominion Parliament can affect the safety and amenities of life in the municipality. On the other hand, the Dominion Parliament cannot relieve the railway companies of the obligation to obey local by-laws which are applicable to all residents in the area. Railway companies must pay local taxes on their property and take the same precautions as other people respecting fire and accident hazards. It is not always easy to apply these rules to particular situations.³ The illustration suffices to show the complications which arise where there are three levels of government and not merely two.

The dependent and subordinate position assigned to local government by the constitution tends to obscure one fundamentally important fact. Local government in the Anglo-American world is self-government. There is a long tradition that local governments are not to be district offices of the senior government but institutions through which local affairs are run by local people. For centuries in Britain, local government was run by a self-perpetuating local oligarchy. The country squires as justices of the peace governed the county.

²In this chapter, senior government, in the singular, refers to the state or provincial government in the United States and Canada or to the central government in Britain

³There have been numerous decisions in the courts defining with some exactness what local by-laws railways must obey and also how far the Dominion can intrude in municipal matters incidental to the regulation of railways, telegraphs and telephones

This system was introduced in the American colonies but it never became rooted there. Local government was rapidly democratized in America, and in the course of the nineteenth century in Britain, the justices of the peace were replaced by elected councils chosen by a local electorate and responsible to it. Local democracy is now so firmly established in popular estimation that no legislature would think of using its constitutional powers to abridge it seriously. Local government has a wide sphere of autonomy guaranteed by political considerations and not by the constitution.

So the statutes which prescribe the areas and kinds of local government invariably provide for the election of a local governing body or council by the residents of the area. The statutes also set out in considerable detail the range of matters with which the council has power to deal. The councils are responsible to their electorate and, generally speaking, to no other political authority. Of course, if corruption has been practiced in the municipal elections, an action can be brought in the courts to unseat the councillors involved. If the council exceeds its powers or fails to carry out duties imposed on it by law, redress can be sought through judicial proceedings.

It is only in very unusual circumstances such as a default in payment on municipal bonds that the senior government can remove the local council or dictate to it what it shall do. It is true also that there are a number of specific matters to be discussed later in which the senior government has some power of supervision over local governments. These are relatively few and, generally speaking, the autonomy of local governments can only be interfered with by the appropriate legislature amending the statutes which define the constitutions of the local governments.

C_{ONTRASTS} BETWEEN EUROPEAN AND ANGLO-AMERICAN L_{OCAL} GOVERNMENT

The practical autonomy of local government within the sphere marked out for it is regarded in Britain and North America as part of the natural order and therefore as scarcely requiring comment. It is by no means inevitable, however,

as the very different status of local government in continental Europe shows. Generally speaking—there are significant exceptions—the countries of continental Europe have no tradition of autonomy in local government. The absolute monarchies established strong central authority over local government. In the late nineteenth and early twentieth centuries, there was a trend toward municipal self-government in Europe. The coming of the dictatorships reversed the trend in many countries and made local government more than ever an instrument of the central authority. The relationship of central and local government in France under the Third Republic affords a fair illustration of the general situation in Europe before the rise of the dictatorships.

A department of the central government, the ministry of the interior, has as its special care the governing of the interior, the local areas of France. In some matters such as education, administration is entirely in the hands of the minister of the interior. The teachers are employees of the central government and the school is as much under its direction as is the local post-office. In other matters such as police, locally elected authorities participate to some extent but the powers of central direction are so strong as to leave only a shadow of local autonomy. The local police chiefs are appointed by the central government and may receive binding instructions from that source at any time. In still other matters, locally elected authorities have what appears on the surface to be a wide power to govern. Even here, however, the agents of the central government exercise continuous supervision and, on all major questions, bend local government to the desires of the ministry of the interior.

The important units of local government are the department (roughly comparable to the county in Anglo-American countries) and the commune (which may be a rural area or a town or city). In all, there are eighty-nine departments and about 38,000 communes. The legislative authority of the department is a council elected by manhood suffrage. However, the council is far from having unrestricted powers of law-making in relation to its locality. As we have seen, the power of the purse is the best test of a legislature's

authority. The council must pass the budget of expenditures but the central government has a wide power to say what it shall and shall not contain.

Nor has the council the pre-eminence over the executive which we might expect a legislature to possess. The chief executive officer who administers the affairs of the department is not appointed by the council or responsible to it, nor is he elected by or responsible to the local electorate. The prefect, as this officer is called, is appointed by the central government and is solely responsible to the minister of the interior. If the prefect fails to enforce the laws made by the council in the way the council intended them to be enforced, or if the council drastically modifies the budget proposals submitted to it by the prefect, the dispute is resolved by the minister of the interior who may remove the prefect or even, in certain circumstances, dissolve the council and call a new election.

The prefect has dual functions. On the one hand, he is the agent of the central government carrying out its orders and enforcing its laws in the department. On the other hand, he is the head of the local government of the department on whom the council has to rely to have its wishes carried out. The laws passed by the French Parliament confine the council of the department to a very narrow sphere and the prefect is expected to see that it does not act outside this sphere. So when the local aspirations as expressed by the council conflict with the policy of the central government, the prefect has to remember that his masters are in Paris and not in the locality. The department is an administrative area of the central government rather than a unit of effective local self-government.

Within each department, there are a varying number of communes, large and small. Each commune has a locally elected municipal council with power to make laws relating to local matters. The council chooses one of its members as mayor and he is the chief executive of the commune. Once chosen, however, the mayor becomes substantially independent of the council. They cannot dismiss him or directly control him in the work of administration. In an

important sense, the mayor too is an agent of the central government. In matters which relate to finance, police, and public health, for example, his main function is to enforce decrees of the central government. In many others matters, he is subject to close supervision by the prefect who can suspend or remove him if he fails to carry out instructions from above.

The council of the commune has a wider sphere of local independence than the council of the department. In the last fifty years, its power to make ordinances, or laws, has been slowly extended. But the range of its independent action is in no way comparable to that enjoyed by municipal councils in Anglo-American countries. In all the genuinely important fields of local government, its decisions are subject to modification by the prefect under certain circumstances. In particular, its freedom in matters of finance is very sharply limited. And recalcitrant councils which resist the tutelage of the prefect can be suspended, and sometimes dissolved, by the higher authorities.

Although the French system of local government provides for the participation of locally elected councils, centralization is its most striking feature. Its character is not seriously misrepresented by charting it in the familiar hierarchical form. At the apex stands the minister of the interior, a member of the cabinet in the national government, from whom orders go to the prefects at the departmental level. The prefect, in turn, passes on edicts and instructions to the mayors who govern the communes at the base of the pyramid.⁴ Local government in most European countries before the era of dictatorships closely resembled the French system.⁵ Dictatorship, of course, has everywhere enforced still more drastic centralization.

Local government in Britain, Canada, and the United States presents the sharpest contrast to these centralized systems. It is decentralized. Within the wide sphere of

⁴There are other intermediate units and officers which need not be considered here.

⁵Switzerland, where local government has a remarkable degree of autonomy, is a notable exception.

operations guaranteed to them by law, the locally elected councils govern according to their interpretation of the desires of the local electorate. The next election determines whether they have interpreted local opinion correctly or not. Local government in close correspondence to local demands and needs is thus ensured.

Not only do the municipal councils make what laws they think fit; they also appoint and control the officers who enforce these laws and carry on the work of daily administration.⁶ While there is a steadily growing number of matters in which the senior government prescribes minimum standards which local governments must observe, the local governments are not obliged to placate officials of the senior government at every turn. No matter how dark a view the senior government takes of the behaviour of particular locally elected councils, it cannot suspend or dissolve them.⁷ If the council has exceeded its powers or violated the law, the remedy, in almost all cases, is an action in the courts. The only other course open to the senior government is to ask the legislature to amend the general law relating to local government. It hesitates to sponsor such a measure because that will bring it into collision with a general public opinion in favour of autonomous local self-government.

AREAS AND AUTHORITIES IN LOCAL GOVERNMENT

Local government requires the division of the country into areas, each with a separate authority or government. The number, variety, and configuration of these areas varies in each country. What these areas are depends partly on past history and partly on the needs and purposes of the present. The county has been a unit of government in Britain since early times and it was transplanted to North America. The county, or its equivalent, is found everywhere

⁶Some qualifications of this statement for the United States will be made later.

⁷Isolated exceptions to these statements can be found. For example, in one or more Canadian provinces, the provincial governments are authorized by legislation to dissolve local councils in certain circumstances, and to compel local councils to obey the law. Such powers as these are glaring exceptions to the general rule and even where they do exist, little or no attempt is made to exercise them.

because of the pervasiveness of rural conditions in our past. There may also be smaller rural sub-divisions of the county; the township in the United States and Canada, and the rural district in Britain. These are now too small, either in area or in population, for many purposes and their importance is declining.

There have always been units of urban government as well. The ancient English boroughs have a long history of local autonomy. The cities and towns of more recent origin in all three countries have been more or less completely separated from the counties or townships in which they lie and have been given charters of self-government. A few great metropolitan centres in each country are special areas with distinctive forms of government. In the United States and Canada, the configuration of the rural units and the names given them vary from state to state and from province to province. Nothing would be gained by attempting detailed description and comparison.

The conditions and needs of rural government differ sharply from those of urban government, and every metropolitan area is in some measure unique. Accordingly, the governmental institutions are more or less adjusted to the differences and there is very little of a common pattern of local government even within a single country. The one great common characteristic has already been discussed. These units are all local democracies practising a wide measure of self-government in a specified list of matters. Also, they are all units of general government and not special areas for special purposes. The city council, for example, has to be a jack-of-all-trades, making decisions in most of the questions of local government which are reserved for local determination.

In Britain, there are very few exceptions to the general authority of the county or city council in local matters. In the United States and Canada, however, there are numerous special areas for special purposes with separately elected governing bodies. These areas may or may not coincide with the boundaries of the town, city, or county. The most typical example is the school district for the purpose of

education with its board of trustees or board of education. In addition, in the cities and towns in many states and provinces, particular matters are often withdrawn from the jurisdiction of the general council and placed under the authority of special bodies like boards of health, police commissions, and public utilities commissions.

The questions whether there shall be special authorities for particular purposes and if so, how they shall be chosen, are not left to local choice. They depend on the state or provincial legislation which establishes the structure of local government and defines its functions. Local government, it must be remembered, is subordinate government and cannot frame or alter its own constitution.⁸

Something will be said later about the significance of these special local authorities. At present, it is necessary to look at the characteristics of the general government of local areas. The legislative authority of the city, town, or county is always an elected council chosen by substantially adult suffrage. Although there are some matters in which the local electorate may, or must, participate in the law-making process by plebiscite, all laws relating to local affairs require a by-law by the council. The council also has some control over the executive and the administration.

STRUCTURE OF LOCAL GOVERNMENT IN BRITAIN AND CANADA

In Britain and Canada, this control is complete. The council is the executive as well as the legislature, the cabinet as well as the parliament. While the central legislature relies on one small executive committee for all purposes (the cabinet), the local legislatures set up separate executive committees for finance, public works, parks, public welfare, and so on. Each member of the council has a share in the control of one or more branches of administration. Each committee of the council occupies a position comparable to that of the minister in charge of a department of the central

⁸In some states of the United States, the state legislatures authorize alternative forms of structure and organization between which localities are free to choose. A range of choice may exist but only if the senior legislature permits it.

government. Indeed, if the chairman of a committee is vigorous and skilful, he may run the committee and thus be himself the equivalent of a minister.

Each committee has a general oversight of administration but does not itself do the work of daily administration. It relies on a civil service, a body of appointed officials and employees, which is very numerous in great cities and almost non-existent in rural townships. In a large city, the committees of council, like the ministers of large departments of the central government, must rely very heavily on their senior civil servants, restricting themselves to the larger questions of policy. In the smaller units of local governments where the affairs to be managed are few and relatively simple, the committees can—and often do—direct the activity of the civic employees in some detail.

The point to be stressed here is that the municipal civil service, be it large or small, is responsible to a committee of the council, and through it to the council itself. The council not only makes the laws; either directly, or indirectly through senior officials under its control, it enforces the by-laws, hires and fires, purchases supplies, lets contracts, and generally conducts civic housekeeping.

In the senior governments of Britain and Canada, the cabinet co-ordinates the work of the several executive departments, ensuring a degree of harmony in administration as a whole. In the local governments of these countries where each branch of administration is under the supervision of a distinct committee of council, there is need for co-ordination to prevent confusion and cross-purposes. The problem is not a serious one until the urban form of government is reached. In the cities, it is met more or less effectively in a number of ways.

The fact of interlocking membership in the various committees helps each committee to keep track of what the others are doing. Frequently, the finance committee is made up of the chairmen of the other committees; just as in the senior governments, administration is integrated through financial control. Also, the mayor of the city is always a member of all committees of council and of most of the other

civic boards and commissions. Furthermore, the committees have no power to make decisions on questions of policy which must always be settled finally by the council as a whole. That is to say, the council itself performs many of the co-ordinating functions of the cabinet in the senior governments. Finally, in the larger cities, administration is too burdensome and complex for the committees to interfere much in its detail. This is the opportunity of the appointed city officials to exercise a good deal of guidance and authority in administration. In many instances, the city clerk assumes functions approaching those of a general manager.

This description makes no reference to the office of mayor which is found in all British and Canadian cities. The mayor is the first citizen or chief magistrate of his city, but these are formal titles and do not confer on him any specific governmental functions. Like the King, he has the influence of an exalted position but no significant power. In Britain, he is not popularly elected but is chosen by the council, generally from among themselves. Apart from being the chairman of the council, he is largely a figure-head gracing ceremonial occasions. In Canada, following American practice, the mayor is popularly elected and his standing with the electorate puts him in a stronger position of influence than the British mayor. He is chairman of the council and a member of all committees but he has no significant powers of his own which are not shared by other members of the council.⁹ The real authority both in legislation and administration is the council.

In Britain, the term of office for members of councils is three years, with a new mayor or chairman of the council chosen at the beginning of each year. In Canada, mayors and members of municipal councils are usually elected for one year only. This is too short a period as it takes a newly elected member of a council a good part of a year to learn how to be useful. The necessity of fighting an election every year discourages many public-spirited but busy men from entering municipal politics. The Canadian practice is

⁹Except in Quebec and British Columbia where mayors have a qualified power of veto

borrowed from the United States where short terms used to be the general rule. Ultra-democratic ideas which, as we shall see, have had a strong influence on the institutions and practice of local government in the United States, suggested that the more often elected representatives had to go to the people, the closer the control the people would be able to exercise over their government.

STRUCTURE OF LOCAL GOVERNMENT IN THE UNITED STATES

In the United States up to the middle of the nineteenth century, the formal organization of municipal government closely resembled the British pattern just described. Legislative and executive authority were concentrated in the council. The mayors of the cities were mostly figure-heads, although they were popularly elected and not appointed officers. Two strong sets of influences of the mid-nineteenth century led the state legislatures to introduce the separation of powers into local government and put the executive and legislative powers in different hands.

First, government of the people for the people by the people was interpreted in the United States as requiring that, wherever possible, those who exercised powers of government should be directly elected. Accordingly, provision was made for direct election of mayors as well as of many of the chief officials of the counties and cities. Clerks, treasurers, auditors, assessors, and others, who in Britain and Canada are appointed by the municipal council, came to be directly elected by the voters in American municipalities. These officers who control a large part of local administration got a direct mandate from the local electorate and became directly responsible to it.

The control of administration was thus largely taken away from the council and responsibility for administration was diffused among a number of elected officials. The same impulses led to the establishment and direct election of numerous distinct local boards comparable in nature to the school boards already mentioned. Power in local affairs was widely diffused instead of being concentrated in a single elected council. While the trend in this direction has been

reversed in the twentieth century, direct election of many administrative officers and boards is still the rule in most counties and in many of the smaller cities in the United States.

The second set of influences was derived from the examples set by the federal and state constitutions. In these constitutions, the separation of powers set the executive apart from the legislature and made it necessary to have the chief executive independently elected. It was plausible to think that a principle which is sound for the nation and the several states must also be valid for the municipality. That is to say, if presidents and governors are directly elected and given wide powers to exercise independently of the legislature, so should mayors. Mayors ceased to be largely figure-heads and became elected chief executives with independent powers. They were given a suspensive veto on by-laws passed by the council, the power to hire and fire civic employees and so on. The extent to which mayors have to get confirmation on their administrative acts by the council varies from state to state.

Canada adopted the practice of direct election of mayors but has balked at giving them any significant executive powers to be exercised independently of the council, presumably because the separation of powers was never an established practice in provincial and Dominion governments. We have already seen how the separation of powers weakens authority and divides responsibility in the federal government of the United States. It has had similar, even more unsatisfactory, results in local government and a pronounced reaction against it developed about the beginning of the twentieth century.

For a variety of reasons associated with the rapid growth and heterogeneous population of American cities, local government in the second half of the nineteenth century in the United States was marked by many evils and abuses. One contributing factor was the division of legislative and executive authority and the diffusion of responsibility among many elected officials. In the last quarter of the century, there was a rising insistence on drastic reform, and a number

of advances toward better local government. Shortly after 1900, the attention of reformers was turned toward the structure of local government itself.

Since then, two principal revisions of the general organization of local government known as the commission plan and the council-manager plan have been adopted by many municipalities. Reorganization of local government in accordance with these plans has made almost no progress in the rural counties or in the larger cities of more than half a million population. The counties still adhere, in the main, to the system of many elected officials and widely diffused authority, and the very large cities are still governed by some variant of the mayor-council plan.¹⁰ But about one-third of the medium-sized and smaller cities in the United States have gone over to either the commission or council-manager scheme of local government.

Under the commission plan, a small commission, or council, of from three to seven members is elected for a term of two or four years. With the exception of the school board which is still retained, no other officials or boards are elected by the voters. One of the commissioners is chosen, either by the commissioners themselves or by popular vote, to act as chairman or mayor but he is rarely given any significant independent powers. The commissioners give full time to the work and are paid substantial salaries. All authority and power, both legislative and executive, is concentrated in the commission.

The separation of powers and the diffusion of authority are eliminated. As a legislative body, the commission enacts by-laws, levies taxes, and appropriates money to the items of expenditure. The day-to-day work of administering the affairs of the city is divided among a number of departments such as finance, works, health, and safety. There are usually an equal number of commissioners and departments so that each commissioner, in addition to being a legislator, is the executive head of a department, directing all its operations.

¹⁰It should be noted that, in the cities which have clung to the mayor-council plan, there has been a marked tendency to strengthen the mayor at the expense of the council.

This structure might be expected to produce the substance of cabinet government: a small executive linking together the legislature and the administration, and concerting among themselves a unified policy both for the legislature and for the separate departments of administration. In practice, however, it has not worked that way. Collective responsibility, which is a vital feature of cabinet government, is lacking.

Each commissioner regards himself as having a distinct mandate from the people for two or four years and he tends to concentrate his attention on his own department. The commissioners tend to give too much attention to the detail of their departments instead of leaving it to expert permanent officials, and too little attention to co-operative co-ordination of the varied business of the city as a whole. When, as too often happens, each commissioner fights for his own department, the executive does not work as a team and administrative rivalries weaken the deliberations of the legislature. Lacking a strong vigilant opposition in the legislature, there is nothing to compel the commissioners to hang together or hang separately.

While commission government is an advance on the forms of organization it superseded, the defects noted, among others, have brought a great decline in its popularity in recent years. At one time about 400 cities had commission government but the number today is little over 250. Some have gone back to the separation of powers between council and mayor often giving the mayor a stronger position than before. Others have adopted the council-manager plan which is the currently favoured plan for reorganizing city government. By 1939, almost 300 cities of substantial size, and a considerable number of smaller cities and towns, had adopted this scheme.

The council-manager plan corresponds closely to the commission plan up to the point where responsibility for the day-to-day direction and control of administration is reached. All governing power and responsibility, both legislative and executive, are vested in a small elected council but the members of the council do not become the active heads of the

administrative departments. Instead the council appoints a city manager who is directly responsible to the council for executing the laws and managing all the affairs of the city. The closest parallel is the business corporation. The electorate are the shareholders in the city corporation, the council is the elected board of directors and they appoint a general manager who is the operating head of the administration.

The line which is drawn is not between legislative and executive but between the making of policy and the carrying out of policy in detail, or administration. The council makes the by-laws, votes the budget, and has general surveillance over administration. The manager puts the council's decisions into effect, advises it on all matters of detail such as drafting a proposed budget, appoints and removes all heads of departments and, subject in most cases to civil service regulations, hires and fires the civic employees. Where the council gets a good manager and can restrain itself from interfering with him in matters of detail this scheme helps cities to build up a competent expert civil service and to get effective co-ordination of administration. Although these conditions are not always satisfied, the council-manager plan has had quite a large measure of success.

About two-thirds of the American cities still maintain a more or less marked separation of powers between mayor and council. In these cities, however, the mayor and council are not always the sole authorities in matters of local government. We have noted that the autonomous school district is found almost everywhere. Schools are controlled by independently elected school boards and not by the council elected for general purposes of local government. Also, in many cities—and in many counties as well—there are other special *ad hoc* authorities, generally elected but sometimes appointed by the governor of the state.

Sometimes the physical boundaries of the authority of these bodies coincide with the boundary of the city or county and sometimes they combine several areas of local government for a particular purpose. For example, there are often

special districts combining two or more municipalities for the purpose of roads, parks, health, fire protection, and water-supply as well as for schools. Wherever a special district is created for the exercise of a particular function of local government, an authority independent of mayor or council, or both, is generally created also.

In addition, there are numerous instances where distinct authorities for exercising particular functions within a city or county are set up. The most common are boards of financial control and police commissions. The former usually consist of the mayor and a small board elected by the voters at large. The latter are often appointed by the state government without reference to the wishes of the local council or local electors.

Such *ad hoc* authorities, where they exist, cause still more diffusion of authority and responsibility in local government. Except where their object is to combine two or more counties and/or cities so as to give a larger unit of administration for such services as roads, water-supply, or public health, all the criticisms of the separation of powers between the mayor and the council are valid against them also. The adoption of the commission or council-manager plan has generally involved the abolition of almost all the special authorities and the concentration of the powers of local government in one body.

The most important of the original impulses for establishing *ad hoc* independent boards was disgust with the elected municipal council. In the last half of the nineteenth century, American local government suffered greatly from corruption and boss rule. Political machines often controlled municipal elections and used local government for their own purposes rather than for the good government of the municipality. The establishment of independently elected boards for the exercise of particular functions was intended to take those functions out of politics. We have already seen, however, that there is little hope of curbing machine politics by merely multiplying elections. If the function in question is an important one, the machine politicians will turn their hand to controlling the elections to the board. The *ad hoc*

boards have been extremely unsatisfactory and the present tendency is toward their elimination.

In addition, the withdrawal of important functions from the control of the council lowers the power and prestige of the council. This, in turn, lowers the calibre of men who seek election to the council, thus providing a fallacious reason for taking still more powers away from the council. Able, public-spirited men are not likely to be willing to give their time and effort to local government unless they see the possibility of solid accomplishment. The surest way to attract them is to concentrate the powers of local government in the general council. This is what has been done in Britain and British local government is markedly more efficient than American and Canadian local government where there is more diffusion of authority.

Local government in Canada has been greatly influenced by American practice. We have already noted the election of mayors and the short one-year terms for councils. The autonomous and independently elected school board is another instance. Canadian cities have never adopted an outright separation of powers between mayor and council with its weakening diffusion of power and responsibility. But there has been a considerable use of independent *ad hoc* authorities for particular purposes, some elected and some appointed.

In the larger urban municipalities in every province, the local police have been "taken out of politics" and placed under a police commission consisting of the mayor, the county judge, and the senior police magistrate (the two latter being appointees of the senior government). A number of the larger Canadian cities have experimented with boards of financial control. Today, the three largest cities in Ontario each have a Board of Control consisting of the mayor and four elected members who substantially control finance and share in the oversight of administration.

In some provinces, independently elected public utilities commissions operate the municipally owned public utilities. In many cities, management of the public library is in the hands of a library board on which the city council has only

a minority representation. Other instances in which councils are compelled to share powers of local government with extraneous agencies could be cited. Although the movement has not gone as far as it did in the United States, it has similar unfortunate results in dividing authority and lowering the prestige of the council.

When the commission plan of city government became popular in the United States, it was adopted by a number of Canadian cities only to be abandoned when its defects became obvious. The council-manager plan is now making progress in Canada and has been adopted by sixteen Canadian cities. American influences on Canadian government are more marked in the sphere of local government than anywhere else.

FUNCTIONS OF LOCAL GOVERNMENT

Although the institution of local self-government is common to Britain, the United States, and Canada, it is evident that there are marked differences in structure and organization. Similarly, there is a broad similarity in the kind of functions performed by local government in the three countries and very considerable variations in the detailed scope of the functions undertaken. Even within the same country, state, or province, the scope of the functions of rural and urban government differ greatly. The functions of rural governments are very few while, generally speaking, the larger the city, the more things its government undertakes. It would be burdensome and confusing to list the numerous functions and note the differences. However, if we are to grasp the pressing problems of local government today, it is necessary to see the general character of the functions performed.

The principal purpose of local government is to provide through collective action a number of services which the citizen, standing alone, cannot secure for himself as well or at all. But local governments have never been left free to undertake anything and everything which a majority of the citizens approve. Local governments can only do the things they have been authorized or required to do by the legislature

of the appropriate senior government. The statutes enumerate the functions of local government and limit the action of each municipality to its own area.

The functions fall into three broad classes. First, there are the protective services of police, public safety as in fire protection, public health, and sanitation. Secondly, there are certain physical services or facilities of which roads, streets, and bridges are the best examples. The public utilities such as light, gas, water, power, and transport which are increasingly owned and operated by municipalities fall in the same group. Thirdly, there are what may be broadly described as the welfare services such as education, libraries, parks and other recreation facilities, hospitals, and the care of the poor, indigent aged, and infirm.

Just as in the case of the senior governments, functions are always changing in scope and emphasis. In local government too, the trend of activity has been sharply upward, particularly in urban areas. The coming of the automobile compelled much greater outlays on roads, streets, and highways. The demand for better education has imposed steadily rising costs. Greater emphasis on preventive medicine and sanitation measures has raised expenditures on public health. Disturbed economic conditions with consequent poverty and unemployment combined with an insistence that such distress be relieved at public expense have multiplied several times the cost of welfare services since the turn of the century. Other expenditures also have tended to rise.

The steady persistent rise in per capita expenditures of local governments over the last century has created a serious problem in municipal finance. Expenditures are always more easily boosted than revenues. But local governments are in a peculiarly difficult position because they must rely almost entirely on a single source of revenue, a tax on land values. None of the other taxes which municipalities are able to impose bring in comparable amounts of revenue. Other things being constant, sharply rising real property taxes will depreciate land values, so that local governments

are often trying to get more and more revenue from a source which shrinks from and with their every advance.

Furthermore, land values are very sensitive to economic conditions following the downward swing of depressions and showing the most marked depreciation in the areas hardest hit by economic decline. Unfortunately for local government, the costs of welfare services in particular mount in periods of depression, rising most sharply in the most depressed areas. Thus revenues are hardest to come by when and where they are most needed. Plenty of statistical proof of this predicament could be given but it is sufficient to recall that many municipalities were bankrupted by the long depression of the nineteen-thirties. And even in the best of times, there is a marked disparity in the financial capacity of different municipalities to maintain a standard level of services.

RELATIONSHIPS BETWEEN LOCAL AND SENIOR GOVERNMENTS

One way of easing the difficulties of the local governments is for the senior governments, which have access to more diversified sources of revenue and can expand their revenues more easily, to take over some of the more onerous functions of the local governments. A number of functions have been thus transferred in recent years. In Britain, distress arising from unemployment and old age is now solely relieved by the central government. In the United States and Canada, a number of welfare problems, which formerly imposed, in one way or another, heavy charges on the funds of local governments have been taken over by the national, or by state or provincial, governments. Through unemployment insurance, aid to the aged, the blind, needy mothers, and dependent children provided by senior governments, local governments have got appreciable relief from the burden of welfare services which would otherwise have fallen on them.

Alongside this movement and in some respects antedating it, is another more complex development. The legislatures of senior governments have enacted laws which impose substantial uncontrollable expenditures on local governments,

limiting their ability to retrench in the face of declining revenues. Local governments are required to provide certain services and to keep them at a level of quality determined on by the senior government. Elementary education is free to the child but compulsory on the local government. Local governments are required by law to maintain a wide variety of sanitary facilities and public health precautions. In a host of other matters, some important and some trivial, central governments require local governments to perform specified duties, to employ officials of recognized qualifications, and so on. In Britain, where this development has gone furthest there are relatively few functions of local government in which the senior government does not impose some minimum standards of obligatory services.

The reasons for the intervention of the central government, whether convincing or not in particular instances, are clear enough. There is thought to be a national interest in maintaining a minimum level of such services as education and public health all across the country. Areas of illiteracy and unchecked disease are menaces to the whole society. Yet for various and excellent reasons, these services are not likely to be as well managed and administered by the senior governments as by the local governments. On the other hand, many, if not all, local governments are hard pressed financially to maintain the standards insisted on by the senior government.

Accordingly, the movement we are describing has been accompanied by grants of money from the senior governments to the local authorities. For example, compulsory free education is everywhere assisted by grants which have risen in amount as the required standards have risen. In Britain, where the senior government imposes many standards, about one-third of the annual current expenditures of local governments are met by grants from the Treasury.

Grants ease the financial position of local governments but they also limit their independence. The senior government defines in detailed regulations the standard of achievement it expects in particular services and it employs inspectors to check on performance. Serious failure to comply

with the regulations may involve a cut in the grant. The central department of education establishes curricula and tests the product of the schools by periodic examination. The recurring visits of its inspectors are a feature of school life. Similar techniques are used in other municipal services whose standards the senior governments want to raise.

There is a great deal more to the intervention of the senior government than the drafting of regulations and the prying of inspectors. The departments of the senior government give the local authorities needed encouragement and valuable expert advice. The department of education tries to keep abreast of new movements and new needs in education, and to interpret these to the local school authorities. The senior government provides a number of services for the local authorities which no one of them could provide for itself. Vaccines and serums, diagnostic clinics and laboratory analysis are provided free of charge. Research in preventive medicine and sanitary engineering is carried on and the results are available to all local governments. A great work of education in public health is carried on by bulletins, demonstrations, and exhibits. In Britain, this development has gone so far in so many fields that the complex relationships of the central and local governments can best be described as a partnership in the providing and improving of the services supplied by local government.

Nothing comparable to this partnership has yet emerged in the relationships of senior and local governments in the United States and Canada. North America did not have to face the complexities of crowded urban industrial conditions as early as did Britain, and is only now slowly adjusting itself to them. Neither the United States nor Canada has developed the art of local government to the point it has reached in Britain. In particular, municipal civil services are not nearly so good in quality. Consequently, there has been a tendency to take particular services entirely away from local governments and make them solely a responsibility of state or provincial, or national governments.

Whether this is a desirable tendency or not, it is the existence of federalism with its intermediate level of govern-

ment which makes it possible. It would be fantastic for the central government in Britain to think of taking over and administering any significant number of the services which local governments supply. It is not so fantastic where the administration of these services can be distributed among forty-eight or nine governments. Federalism can be employed not only for decentralization but also for a modified centralization.

Here we come again upon a persistent trend of present-day politics, the drive towards centralization. In discussing federalism, it was noted that a rising demand for the states and provinces to undertake more expensive functions had created a tendency to centralize more powers in the hands of the federal government. We now see that the pressure for more governmental services at the municipal level has had similar results. The parallel is remarkably close. In each case, general financial weakness of the governments at the lower level and their widely disparate capacity for maintaining the desired services lead to outright centralization of particular services, and to grants-in-aid and extensive control over other services by the government at the higher level.

It is important to note two specific aspects of the centralizing tendency which are not directly connected with what has been said above. First, the senior governments maintain control over borrowing for capital expenditures by the local governments. Generally speaking, local governments are free to fix their tax rates as they like and to spend their revenues as they see fit. Thus they may undertake at their own discretion any project which they can pay for out of current income without borrowing. But if they wish to build a bridge or a town hall or a sewage disposal plant which has to be financed by borrowing, the consent of the senior government or one of its administrative agencies must be had before debentures are issued.

The purpose is to prevent local governments from saddling the taxpayers of the future with crushing payments of principal and interest. In over-optimistic mood, many communities will embark on heavy capital expenditures if

not checked. When the future is to be mortgaged for the sake of the present, the senior government intervenes to protect the interests of the future.

Formerly, the limitation on borrowing by local governments was generally fixed by the legislature setting an upper limit for each municipality. Today, the legislature merely states generally the conditions in which borrowing is justified and requires the local governments to get the consent of a particular senior government department before raising a loan. With detailed control over borrowing and increasing collaboration between local and senior governments, the latter are setting up departments such as the Department of Municipal Affairs in Ontario and the Ministry of Health in Britain whose main concern is the supervision of local governments.

The second aspect is the contribution of technology and scientific advance to centralization in government. Many instances could be offered. For example, before the days of the motorcar, roads and bridges were almost entirely the responsibility of local governments. The development of motor traffic called for a kind of road entirely different from that of the horse-and-buggy era. Most municipalities cannot afford to hire the engineering skill and knowledge needed to plan and build durable main highways. Most of them cannot afford to buy the massive machinery necessary for the maintenance of such roads.

Moreover, if the motorist was to get the most for his money, it was necessary to plan a network of trunk highways and secondary feeder roads. Only a senior government with authority over a wide area could plan such a network. These factors go far to explain the lifting of the control of, and the responsibility for, main highways from local governments, and the establishment of central supervision of municipal development and maintenance of secondary roads.

Another instance is peculiarly related to rural local government. A hundred years ago, such control of plant pests and diseases as existed rested largely on municipal regulation. Today it is mainly in the hands of senior governments. There are two major causes for this centralization.

First, the development of the modern means of transportation has meant that failure of effective control in a few municipalities is a menace to the whole country. Secondly, effective control of plant pests and diseases depends on the skilful use of a vast range of scientific knowledge developed in the past century. Local governments often do not understand, and even where they understand they cannot command, the scientific knowledge and apparatus necessary to combat these enemies effectively.

Consequently, the senior governments now employ a number of scientists who are continually studying plant pests and diseases and devising new means of controlling them. Senior governments have taken power to destroy diseased crops and orchards wherever found and to forbid nurseries from distributing stock without a certificate of health. Moreover, they regulate and supervise the efforts of local governments in this field. Almost invariably, advancing science and technology provide impulses to centralization.

It will be noted also that the powers relative to local government which are shifting to the centre are more often exercised by the executive than by the legislature. Local self-government, being subordinate government, has always been subject to ultimate control by the senior government. In the nineteenth century, this control was almost always exercised through rules of law made by the legislature and enforced through actions in the courts. If it was claimed that the local governments had exceeded their powers or failed to perform their mandatory duties, the question had to be determined by the judges. Today the legislature in making laws about local government often legislates in broad general terms and leaves the detailed rules, decisions, and enforcement to a department of the central government. Aggrandizement of the executive and growing reliance on the administrative process are significant features of the changing relationships between local and senior governments.

Through the convergence of a number of different influences, Anglo-American local self-government has substantially less formal autonomy and independence than it had one hundred years ago, or even at the turn of the century.

There are some who think that the trend we have been examining threatens to take the "self" out of local self-government. It is difficult to estimate the seriousness of this threat but no doubt a good deal depends on the vigour and intelligence shown by local democracy. If local governments are determined to understand the complexities of their present-day functions and to improve their civil services sufficiently to meet their problems, central control and supervision and central-local collaboration may help rather than hinder them in surviving. Certainly, local governments need the knowledge, advice, and suggestion which senior governments can supply and which they cannot easily secure by their unaided efforts.

At any rate, in Britain where central tutelage has advanced furthest there is little evidence that local governments are becoming markedly subservient to the senior government. On the whole, local self-government there has shown remarkable vigour in the last fifty years. Numerous associations of the different kinds of local governments and of local government officers have been formed and they take common counsel on their problems. These local government associations form one of the best-informed and most powerful lobbies the central government has to face and it is difficult to push through legislation which they resist, and extremely difficult to administer it effectively. Some seemingly drastic powers of central control over local government are not as drastic as they seem, and the central government, to get its way, has to rely on the arts of persuasion rather than the instruments of coercion.

The probable effect of the growing central control of local government is an important question because it seems likely that vigorous local self-government is necessary to the maintenance of democracy in national politics and government. In a general way, the history of democratic experiments in the last hundred years tends to confirm this conjecture. Democracy has had the greatest stability and the highest measure of success in the countries with strong systems of local self-government. On the other hand, in continental Europe, the countries with centralized systems

of local government or relatively weaker institutions of local self-government have most easily fallen prey to dictatorships. Of course, these may be accidental coincidences not in any significant way linked as cause and effect. There are, however, some very plausible reasons for thinking there is a great deal more to it than mere coincidence.

LOCAL GOVERNMENT AND DEMOCRACY

In the Anglo-American tradition, local self-government has long been credited with contributing greatly to the working of democracy. Two of the commonest arguments may be looked at first. It is often said that experience on a municipal council is a valuable elementary training for budding statesmen and politicians. By being faithful in small things, the municipal councillor learns to handle great affairs when he is called by the electorate to service in national or provincial politics. Secondly, the mass of citizens get an indispensable political education through discussion of lively local issues and participation in frequent local elections. Such experience helps them to grasp national issues and to exercise their franchise wisely in national politics.

These two contentions are valid as far as they go but they are far from revealing the essential links between local self-government and democracy. Indeed, they tend to obscure these links because they tacitly assume that it is national and state or provincial politics alone which really matter in a democracy, and that local government is merely a training centre and not even a junior league in the game of politics.

We miss the essence of democracy if we think of it mainly as something practised by statesmen in a distant capital and forget that it consists of an attitude of mind towards, and a method of dealing with, all the stresses and strains of living together in a society. If local quarrels were always settled by discussion at the local level and if local communities put their best efforts into making adjustments which are tolerable to all members of the community, there would be less need to tremble at the mention of dictators.

Unfortunately, we have a weakness for big things. The newspapers, which generally give us the kind of news we want, give us exciting front-page accounts of the dramatic events of national and international politics while the tiresome wrangles of local politicians are decently buried under small headings on an inside page. We do not want to listen to John Smith in a radio discussion on some issue of local government. Rather we want to listen to President Truman, and Prime Ministers Attlee and King, to hear what the big men are doing about big things. We give too large a share of our attention to these distant exciting events which we cannot adequately understand and on which, therefore, we often cannot make useful judgments.

The ideal of political democracy demands intelligent, responsible participation by the people in the choice of those who govern and in the approval of the policies by which they are to govern. Intelligent participation requires that the citizen be able to judge the character and qualifications of those who ask for his vote, and to understand the platforms he is asked to support or reject. Responsible participation requires that the citizen, as he votes, should realize that his vote affects the public welfare, that the public welfare will suffer the consequences of his errors in judgment and that he must, therefore, watch his elected representatives and the working out of programmes in practice so as to rectify errors at the earliest possible moment. In the discussion of national government and politics in these pages, numerous reasons have been given for thinking that we cannot come at all close to this ideal in the national, state, or provincial political arena. The ideal can, however, be much more closely approached in local government and politics and that is why democracy, like charity, begins at home.

Some approach to the ideal of intelligent, responsible participation is made in all municipalities where self-government is not a sham. The citizen sees with his own eyes how the men he has elected behave. He can see—again with his own eyes, or with the eyes of his friends the value of whose judgment he can estimate—whether the policies being followed by his local government work well or ill. It is

possible for people, even as they go about their own work, to keep track of their local government.

It is vastly more difficult to do in national and state or provincial politics. Most voters do not know the candidates between whom they must choose. This is often true in local politics too, particularly in large urban municipalities, but it is not nearly so generally true. Moreover—and more important—many of the issues in provincial and national politics are hopelessly abstract to the average citizen; they do not arise out of things which have come concretely to his attention and about which he has knowledge. He does not understand the jugglery by which the budget is balanced, he does not understand the cases for and against the manipulation of currency and credit. Most people are wearied by the parade of statistics marshalled for and against particular governmental policies, and bewildered by the seemingly unanswerable, yet contradictory, arguments put up on particular matters by the opposing political parties.

The best proof that this is true is to be found in the behaviour of the political parties. As much as possible, they try not to bore the citizen with hard facts and statistics. They try to help him to make up his mind easily by finding simple issues which appeal to his likes and dislikes and do not require sustained attention. Hence, national, and state or provincial, elections always tend, much more than municipal elections, to be a registration of emotions and to fall far short of the ideal of intelligent, responsible participation.

It is not suggested that such elections are solely registrations of emotions. There are generally some tests of a political party's claim to support which the voter can apply fairly easily. Not uncommonly, some moral issue is at stake and on it the average man's judgment is as good as anyone's. Yet no one can have failed to note the frequency of the cries about fearsome bogies such as a gestapo, a creeping bureaucracy, or the strangling octopus of socialism. And there can be little doubt that the greater the powers exercised by senior governments, the more various and complex election issues become, the less the voter is able to understand and the more he is thrown back on his emotions.

When the government is conducting operations of great magnitude and complexity, how is the voter to know whether it deserves support in the next election—whether it is doing well or ill? For the most part, its record cannot be fairly judged by the effects of its policies on the life of any particular voter or his neighbourhood. If a rational judgment is to be made on its record, it must be judged by the way its policies have worked all across the country—statistics again. For these statistics, the voter is at the mercy of the politicians, the writers in the newspapers, the speakers on the radio, about whose integrity and capacity the voter generally knows little or nothing.

This is not a criticism of the average citizen nor is it a criticism of the political parties. Until the electorate is much more highly educated and possessed of a great deal of leisure which they devote to the understanding of political issues, it is hard to see how it could be otherwise. It is a criticism of the assumption that local self-government is just a training ground for democracy which is to be practised elsewhere. It suggests that, for a long time to come, intelligent, responsible citizenship must find its best and most effective expression in local self-government.

At the same time, the fact that intelligent, responsible citizenship is hard to achieve in national and state or provincial politics must not be allowed to obscure its importance or to lessen efforts to achieve it in those fields. There are a great many matters which cannot be dealt with at all by local governments and so must be entrusted to the senior governments. The recent experience with dictatorship in Europe shows clearly that if democracy fails at the national level of government, it automatically disappears at the local level. The conclusion to be drawn from the fact that democracy can be most effectively practised at the local level is that as many matters as possible should be reserved for the decision of local governments. Every increase of centralization, even when it is unavoidable, puts heavier burdens on the citizens' capacity to understand what is going on and to control it.

This brings us to an important reason for linking democracy with local self-government which has already been discussed in the chapter on federalism. It was urged there that the decentralization afforded by a federal system reduces the number of disputed matters which have to be settled in the national political arena, thus making it much easier to get majorities which can agree on what the national government should be doing.

The same argument applies point for point to the still greater decentralization provided by local self-government and it need not be restated at length here. It is sufficient to say that the more closely the senior governments can be restricted to the general common interests which unite the citizens, the greater will be national unity and the less will be the danger of the two-party system being splintered into a multiple-party system. One of the best ways of so restricting the senior government is to arrange that local demands and local needs which vary widely will be met by local governments responding to these demands and needs.

The experience of the French Third Republic with its highly centralized local government tends to support the position just stated. It has already been explained how almost all important decisions in the sphere of local government are decided either by the ministry of the interior in Paris or by one of its agents in the field. When local matters cannot be decided at home, the main job of each member of Parliament is to represent his constituency at the point where the decisions are made. A great part of the time of the French member of Parliament is taken up with lobbying at the ministry of the interior in the interests of his locality.

A frequent combination of professions in French life is that of mayor and member of Parliament. To be a successful mayor, one needs to have close connections with, and some influence over, the ministry of the interior. The most effective connection is membership in the Chamber of Deputies. At each election in the years before the *débâcle* of 1940 at any rate, from fifty to eighty mayors were elected to the Chamber of Deputies where they formed a powerful mayor's bloc primarily concerned with putting pressure on

the department of the interior. Every deputy, whether a mayor or not, has a great many chores to do at the ministry of the interior. According to the constitutional forms, the central government controls and directs local affairs. In actual practice, local affairs and interests invade the central government hoping to control its decisions.

French localities must think of their own interests and they must send to Parliament men who will be determined champions of local needs and interests. If the local water supply is not adequate and more up-to-date facilities cannot be purchased without the consent of the department of the interior, it is inevitable that a high proportion of parish pump politicians will go to Parliament. A Chamber of Deputies with its gaze thus introverted has not enough interest in, time for, or understanding of, broad questions of the national interest. Politicians biased toward local interests find it extremely difficult to find common ground on which to base national political parties united in a common view of the national interest. This, it may be suggested, is one of the roots of the multiple-party system in France, although by no means the only one. Localism has always played too important a part in French national politics. Countries with a vigorous system of local self-government are freed of such distractions.

One other and rather different aspect of the significance of local self-government may be selected for attention. In most countries of continental Europe, a central department of the interior has had a large measure of control over local government. Usually this includes pretty complete control of the local police forces. Unlike the local police in the Anglo-American system, the *gendarmerie* are really agents of the central government in the localities taking orders from the centre. Thus control of the department of the interior was one of the great prizes for which Nazi and Fascist parties contended when they were fighting their way to power.

For example, the first government in which Hitler participated in Germany was a coalition with the Nationalist party, each party getting half the posts in the cabinet. But

in that cabinet, Göring and Frick got control of both the Prussian and Reich ministries of the interior. That gave them leverage on the local governments, and control of the police across the country. They were thus enabled to fasten their grip on the country in an incredibly short time. This helps to explain how the Nazis, who never got 40 per cent of the total vote in a free election, were able to carry through a revolution without firing a shot—except, of course, the shots of the local police acting under their orders.

A highly centralized system of local government eases the task of a would-be dictator while local self-government helps to assure its people against the sudden *coup d'état*. Even where there is no immediate need to guard against such eventualities, an effective system of local self-government acts as a counterpoise to the senior government or governments. All forms of human organization tend to expand and aggrandize themselves unless and until checked by stronger forces. It is therefore extremely important, at a time when the powers of central governments are expanding very rapidly, to have active energetic local centres of political life which are determined to retain a sphere of independence for themselves.

On occasion, indeed, they may resist the central government too strongly, clinging doggedly to powers they can no longer exercise effectively. But we must reckon with the bad which the good often carries with it. The point to be remembered is that the senior governments which are in ultimate control of the weapons of coercion in the society are checked not only by legislatures, electorates, and courts but also by independent local governments in which many men of modest ambition find an outlet for their energies and their desire to render public service. These men can be counted on to resist centralizing pretensions and to compel those who urge more centralization to prove its necessity to the hilt.

These are some of the reasons for thinking there is a close connection between local self-government and liberal democratic senior governments. Still others could be given. The fact that dictators always destroy the autonomy of

local government also suggests a connection. It does not follow however, that local self-government will continue to bolster liberal democracy in the twentieth century unless it is substantially modified and improved.

Financial weakness and the necessity for governments to possess technical scientific knowledge are not the only factors in the movement to shift the responsibility for certain services from the local to the senior governments. Many units of local government, particularly rural ones, are too small to carry some of the newer functions of government. The civil services of most American and Canadian municipalities are not of a sufficiently high quality to perform many municipal functions efficiently. As the things which local governments are expected to do become more numerous and complex, a considerable overhauling of municipal organization is imperative.

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CHAPTER XV

DEMOCRACY AND DICTATORSHIP

THE preceding chapters have outlined and compared in a general way the main features in the structure of government in Britain, the United States, and Canada. The description given falls far short of what would be necessary to explain the complex operations of these governments as going concerns. No one will know much about them unless he observes them at work and reads widely in books which undertake detailed exposition. The caution given at the beginning may be repeated; the working of any system of government is the study of a lifetime.

If the systems of government under consideration had an assured future, the correct method of introductory study would be to master one of them in detail. There would be no excuse for the superficial examination given them here. Unfortunately, for a generation, there have been increasing doubts about the workability of liberal democratic government. The disasters which have befallen the democracies of Europe in the last twenty-five years show that the doubts are not entirely groundless. It has become fashionable but by no means fanciful to talk about the crisis of democracy. For the present generation, the crisis and its meaning must be one of the main objects of attention.

For this reason, detailed description has been limited to the main institutions of liberal democratic government and a good deal of space reserved for elementary analysis. It was pointed out at the beginning that, in a liberal democracy, government is expected to serve two principal ends or purposes. First, democracy defined as government by the people seeks to ensure a close correspondence between what the people want and what the government does. Secondly, a democracy which is liberal seeks adequate guarantees of a large sphere of liberty of thought and action for individuals.

The manner and degree in which the main institutions of democratic government contribute to these ends have

been discussed. An attempt has been made to explain the essential functions which the different organs of government are expected to perform, and the nature of the obstacles in the way of a satisfactory performance. There is a great deal more to be said on all these questions and many students of the subject would not agree with some of the explanations suggested here. Yet there is no doubt that these are the questions which need to be answered, and that there is little point in the study of government and politics unless it contributes to an understanding of them.

SUMMARY OF TRENDS IN DEMOCRATIC GOVERNMENT

We have seen that the main institutions of government do not remain unchanged from one generation to another. They have been considerably modified in the last fifty years in all three countries. The modification has come about in response to the rapidly expanding activities of government. The new activities have not only added greatly to the total of government business but have also made the conduct of that business much more complicated and difficult. It is no longer possible to make a clear-cut classification of the powers of government into legislative, executive, and judicial. It was shown that in many fields nowadays the law is being made in the course of its administration, or execution, and that it is being administered while it is being made. Not only is it clear that the judges sometimes make law while they are interpreting it and applying it to particular cases but also that the administration often exercises judicial functions when it rules on claims and disputes in the course of administration.

The fact is that the administration has become in some measure a government within a government. It makes a great deal of law by rules and regulations and orders-in-council, it executes and enforces the law generally, and it exercises substantial powers of a judicial nature. Some students of the subject urge that if analysis is to be realistic we must add a fourth power, the administrative, to the classification. It is at least clear that the older classification does not sufficiently explain the facts.

If the tripartite classification of the powers of government is now inadequate, the doctrine of the separation of powers which rests on this classification is also defective. Whether or not the separation of powers is necessary to protect the liberties of the citizen against the government, there is no doubt that governments cannot perform efficiently their present-day tasks if they are bound by rigid separation of powers. This is conceded even in the United States where the separation of powers is written into the constitution, and much thought is being given to ways and means of greater legislative-executive collaboration. In all three countries, it is still generally and strongly believed that the judiciary should be independent of both legislature and executive. Judicial independence has been maintained but at the cost of taking the power to adjudicate on numerous matters away from the judiciary and reposing it with the administrative. Indeed, the clear proof that strict adherence to the separation of powers interferes with the performance of the present-day tasks of government is the rise of the administrative in which are frequently joined powers of legislating, of executing, and of judging.

It does not necessarily follow, of course, that the administrative will swallow the other powers. The legislature still fixes the broad objectives and methods of administrative action and the judiciary still applies certain canons of legality to administrative discretion. It may be possible to limit the mingling of legislative, executive, and judicial powers to certain areas of governmental activity. New and better devices of control may be devised. Much depends on whether the functions of government continue to grow more numerous and complex.

Frequent reference has been made to the aggrandizement of the executive. The rise of the administrative is the most striking aspect of that aggrandizement, for the administrative is always under the control and direction of the executive. The administrative is a part of the executive and they have been treated separately here only for purposes of exposition. Another important factor in the strengthening of the executive is its indispensability in law-making. The

legislature cannot make effective laws on most subjects without constant reliance on the data and experience gathered by the executive in the course of administration. In Britain and Canada the executive has gained an almost unchallenged initiative in legislation, and even in the United States the trend is clearly in that direction.

The members of the legislature, coming from all walks of life and having a short tenure of office which frequently is not renewed by the electorate, are the amateurs in government. They have an advantage in being closer to the currents of public opinion than the civil service but even the most intelligent of them are at a decided disadvantage in technical matters when ranged against expert civil servants with permanence of tenure. The legislatures have not taken adequate steps to adjust their procedure to the increased tempo and growing complexity of government. So, while they still make the big decisions on policy, they are becoming much more dependent on the executive to invent policies for them to approve. Moreover, governmental administration has so wide a range and so many ramifications which can only be understood after long, patient, and skilled investigation that legislatures are steadily becoming less effective critics of administration. They criticize but they often do not know what to criticize or what to regard as a satisfactory answer to their criticisms. Perhaps the most serious aspect of the aggrandizement of the executive is that the intricacies of the administrative machine and of the operations it is performing leave the legislature in a state of bewilderment.

The legislature makes the important decisions on policy fixing the general line which government is to take. But the legislature does what the ruling political party wants it to do. Although the authority of the majority party is not so extensive in the United States Congress, it controls the legislature in Britain and Canada. If the legislature is weak, it is partly because the political parties have not established secretariats to help them to formulate policy, to explore ways of putting their policies into practice and to study administration in detail to see how the policies of

the opposing party work out in practice. In fact, the older parties have brought vote-gathering to a fine art but they have not taken comparable pains to study public policy and its administration. The parties have not adapted themselves to the great expansion of governmental functions.

Whatever the weakness of a two-party system, it is an improvement on the shifting coalitions of a multiple-party system. Government is expected to do every day so many things of vital importance that it must act vigorously and consistently if the tasks are to be accomplished. These requirements are not likely to be met unless one party has a clear majority in the legislature. However, the great range of governmental action and the consequent rise of numerous pressure groups which seek to influence or control governmental action are making it extremely difficult to maintain the two-party system. Just when firmness, vigour, and coherence in public policy are needed as never before, there are marked tendencies towards a splintering of the parties, and consequently towards weak incoherent coalition governments. There is more than a little irony in the fact that the very conditions which demand vigour and consistency from governments are also the main factors threatening the continuance of the two-party system.

The courts have maintained their independence but the scope of their authority is being narrowed and the discretionary powers of government officials correspondingly increased. How greatly the Rule of Law is threatened by this development depends on how far it goes. An essential safeguard of liberal democracy would be lost if a numerous officialdom with wide powers were completely free from control by the judiciary. On the other hand, the judges cannot—and never could—supervise all governmental action. Today, they are not entirely satisfactory interpreters of much of the legislation under which officials hold their powers. The truth is that the judges are best fitted, by tradition and training, to interpret and apply the Common Law. The Common Law with its roots in custom has been largely made up of general rules of conduct applicable to all, rules which are observed in most instances because they accord

with the community sense of right. In those relatively few instances in which Common Law rules were not obeyed voluntarily, the loose organization and the dilatory procedure of the Anglo-American judicial system sufficed for a long time to enforce obedience.

The rapid economic and social changes of the last hundred years have upset habitual and customary ways of life causing much insecurity. The Common Law has not been able to adapt itself to these changes. Attempts are therefore made to adapt the law by legislation. But, as we have seen, much of the legislation now being passed does not make law in the sense of establishing general rules of conduct for all. Rather it authorizes administrators to make different orders for different situations, and to enforce them. In many human relationships, law is being superseded by discretionary administration. The scope of the judicial power narrows because judges are not administrators but interpreters of law.

The great growth in the functions of government has not merely modified the relationship of the legislative, executive, and judicial powers; it has also altered the relationship between the different levels of government. When government is required to do many things and when everything it does has numerous effects on other aspects of life which in turn may have to be regulated, the advantage goes to the government with the longest reach because it can control more of the factors involved. Thus local government loses authority to the senior government and comes under its direct and detailed supervision. In a federal system, the state governments lose powers to the national government. They become less able to fend for themselves and their autonomy within the federal system is restricted, if not threatened with extinction. The trend towards centralization has been a marked feature of the last fifty years.

In summary form, these are the trends which can be observed in liberal democratic government. They do not, of themselves, prove that democracy faces a grave crisis. On three points, however, they are indicative of crisis. First, the party system on which democracy must rely to direct the government and to ensure that it obeys the will of the

people shows signs of disintegrating in the face of diverse demands of pressure groups of various kinds. Secondly, judicial scrutiny of executive action which has played a very important part in ensuring that government shall be servant and not master is being steadily relaxed. Thirdly, centralization of authority with the senior governments, and aggrandizement of the executive within the senior governments, are creating heavy concentrations of power which, if not closely controlled, will get out of hand. There could be crisis in this combination of trends.

Those who talk about a crisis of democracy do not all agree about its nature. To some, the crisis is spiritual. That is to say, the people of the democracies have not been able to grasp and keep hold of an adequate conception of the good life and of a just society. The crisis arises because they do not know what they want or ought to want. Others regard the crisis as primarily institutional, or governmental. The democracies, they say, have failed to adapt their constitutions and machinery of government to the enormous demands made upon governments for services and regulations of various kinds. Still others insist that the crisis arises from the inherent impossibility of reconciling democracy and a large sphere of individual liberty with massive governmental operations which affect almost every aspect of life.

It is possible that each of the three is partially valid but it would take us too far afield to go into the matter here. There can be no useful exploration of the crisis of democracy until the nature of democratic government and its main institutions are understood. It may aid understanding if we take up briefly again the comparisons between dictatorship and democracy which were suggested at the outset. The governmental institutions of the dictatorships are in marked contrast to those we have been examining. Yet some of them look like projections of recent trends in liberal democratic government.

STRUCTURE OF GOVERNMENT IN THE DICTATORSHIPS

The Nazi and Fascist regimes in Germany and Italy have run their course, and the Russian dictatorship, we are

told, is rapidly becoming a democracy.¹ There are great differences in the ideals and the social results of these three systems of government. Each is, or was, a distinct system differing very markedly from the others in the details of organization. Despite these differences, there is a striking similarity in the general pattern of the structure of the three governments.

The dictatorships recognize the distinction between legislative, executive, and judicial power and maintain, as a matter of form, distinct organs for the exercise of each kind of power. But the principle of the separation of powers is not recognized and therefore exercises no restricting influence on governmental organization. In fact, there is a concentration of power in the executive which was most clearly marked in Nazi Germany and is less openly avowed in Russia where many democratic forms were copied in the last revision of the Soviet constitution in 1936. To put it more accurately, all power is concentrated in the leadership of the one political party which either constitutes or controls the executive.

The most significant similarity between dictatorial regimes is the supremacy of the one party. All other political parties are proscribed. The opposition to the government cannot combine in an opposing political party and compete for the favour of the electorate. In each case, the party controls election of members to the legislature. In Russia and Germany, only one candidate is nominated for each seat in the legislature. Almost all the voters go to the polls and they vote almost unanimously for the "official" candidates. In Italy, popular elections as a means of electing the legislature came to an end in 1939 when the legislature became largely composed of representatives of occupational groups. However, the Fascist party controlled the choice of representatives by these groups. Thus the legislatures are always composed of those who will follow the orders of the party. They have ceased to be freely representative of the various interests and impulses in the community.

¹For the purpose of grammatical ease in this comparison, it will often be convenient to refer to the Fascist and Nazi systems in the present tense as if they still existed.

In fact, the legislature has ceased to be a significant organ of government. The German Reichstag under Hitler enacted only seven statutes in seven years. The Italian Chamber of Deputies had no power to consider or enact any measures which had not been approved by Mussolini. The Supreme Council of the U.S.S.R. consisting of two thousand members is much too large a body for effective deliberation. It meets briefly twice a year to hear reports from government officials and to ratify actions taken by the government. Almost all legislative functions are performed by a small executive committee, or Presidium, of the Supreme Council consisting of thirty-seven members. This committee together with the Council of Commissars (or cabinet) might be said to form the executive. But the final authority in all important decisions, whether legislative or executive in nature, is a still smaller and unofficial body, the Political Bureau of the Communist party. It is the board of high strategy for the party and for the government, composed of about a dozen of the leading members of the party.

In Germany and Italy, the executive consisted of those whom the party leader chose to assist him in determining policy and in administering the various departments of government. For all practical purposes, the party leadership and the executive were identical. In Russia, the Supreme Council chooses both the executive committee of the Supreme Council and the Council of Commissars but the Communist party has a decisive influence in the choice. The laws, in each case, are made by executive decree and generally confer wide discretionary power which is unchecked by judicial supervision. Legislative and executive power is concentrated in the leader and in those who share his confidence or power.

The judiciary under the dictatorships remains an important institution for settling disputes between private citizens and interpreting the law applicable to such disputes. New judicial functions arise from the revision of the criminal law to include a number of political offences against the regime. Generally, special tribunals for defence of the state against its internal enemies are established but sometimes persons accused of political offences are tried in the ordinary

courts. Great care is therefore taken to ensure that the judges shall have the appropriate attitude towards cases coming before them. In Germany and Italy, the Nazis and Fascists purged the courts of all judges who were unsympathetic to the new dispensation. In Russia, the Communist party has exercised effective control over the appointment or election of judges.

The ordinary courts have no authority to deal with disputes between citizens and the government or government officials. In Germany and Italy before the rise of the dictatorships, there were special administrative courts for this purpose similar to the French administrative courts briefly described in Chapter x. Under the dictatorships, these courts lost their independence completely and became mere tools of the administration. Even then, many matters were withdrawn from their jurisdiction. A government with unlimited decree power does not need judges to interpret the law. If the law does not accomplish the purpose for which it was enacted, it can be interpreted or modified without delay by another decree.

Moreover, under these dictatorships, the nature of law and the functions of the judiciary differ sharply from the prevailing Anglo-American ideas. The Common Law in Britain and America puts its main emphasis on the rights of individuals against other individuals and against the government. The function of the judiciary is to declare and enforce these rights when particular disputes arise. In the dictatorships, on the other hand, where the government regulates all aspects of life without exception, the emphasis of the law is on the duties of the individual to obey the government, and the judiciary in its decisions must constantly underline this emphasis. The judiciary is an instrument for safeguarding the regime and promoting its conception of the good life.

Accordingly, the courts are not concerned merely with acts done but also with the motives, character, and general attitude of those who come before them. Under the Nazi rule in Germany, the courts often penalized individuals or denied them redress not because of their actions but because they had an unconstructive attitude and would no doubt be

guilty of transgressions if they had a chance. In other words, the Nazi courts had a preventive as well as a punitive and compensatory function.

The clearest description of the functions of the judiciary in a dictatorship is given in a Soviet law of 1938 relating to the judiciary. It is there declared that the general purpose of the courts is "to educate the citizens of the U.S.S.R. in a spirit of devotion to the fatherland and to the cause of socialism, in the spirit of an exact and unfaltering performance of Soviet laws, careful attitude towards socialist property, labour discipline, honest fulfilment of State and public duties, respect towards the rules of the Socialist Commonwealth." The entire emphasis is on the duties of the citizen and the first imperative for the courts is to educate the citizen in the socialist way of life. Soviet jurists have often retorted that the Anglo-American judiciary has also been primarily concerned with protecting a way of life, with enforcing the rule of bourgeois capitalism. There is a substantial element of truth in the retort. It would be entirely accurate if it went further and asserted that the Anglo-American judiciary has consciously striven to maintain the liberal democratic way of life including the capitalist economic system.

A wide sphere of individual liberty involves constant striving and competing which would be destructive of liberty if there were not clear definitions of what the individual is entitled to do, and what he must refrain from doing so as to preserve the rights of others. Accordingly, the judiciary in a liberal democratic system must put a heavy emphasis on individual rights. In a society where other values are supreme, the judiciary must defend those values. The only point being made here is that the courts in the dictatorships are defending different ways of life.

Another striking feature common to the three dictatorships in question is the destruction of the independent organization of group interests. Pressure groups, as such, are abolished. With the elimination of capitalism in Russia, most of the diverse economic interests associated with it also disappeared. (According to socialist theory, the

abolition of profit and private property automatically dissolves the diversity of economic interests and replaces it with one common interest, the maximum productivity of the economy as a whole.) Such group interests as remained ultimately lost their freedom to agitate and to press their point of view on the government. For example, the trade union organization has come under the control of the Communist party and the principal function of the trade unions is to ensure labour discipline and efficiency in pursuit of the objectives of the government.

In Germany and Italy, the dictators did not tear down the existing social and economic structure with its wide diversity of organized group interests. Rather they reconstructed the jumble of divergent group interests by sternly co-ordinating each of them with the aims of the party and the government. By pressure and compulsion, associations representing group interests were persuaded to elect as their officers party members or party sympathizers. The associations ceased to be independent organizations lobbying the government and became instruments by which the government enforced its drastic policies on the groups of which the nation was composed. Under party leadership and control, many groups of the type discussed in Chapter VIII became more highly organized than ever before and the government delegated to them wide powers of self-government. However, it was not genuine self-government. The associations lost their autonomy and vitality and became merely administrative departments of the government for executing the government's policy.

The modern totalitarian dictatorships cannot tolerate independent group life. It has already been pointed out that the political parties in the democracies are, in large measure, combinations of group interests. If the dictators allowed groups their independence, many of them would combine to oppose the government. That is to say, opposing political parties would, in fact, be formed despite the ban on them. Therefore, the organized groups had either to be liquidated, or co-ordinated and knit into the governmental structure.

When Hitler came to power, Germany was a federal state. One of his first acts was to destroy the autonomy of the separate states or provinces. Autonomous states were just as intolerable to the Nazi party as were autonomous associations of group interests. All possible centres of resistance to the programme of the party had to be destroyed. The separate states remained only as administrative divisions of the country ruled by a governor, or party boss, responsible only to the Fuehrer.

The Union of Socialist Soviet Republics, on the other hand, is organized as a federation of sixteen socialist soviet republics, i.e., states or provinces. In the Soviet constitution, much is made of the autonomy of the several republics even to the point of conferring on them a formal right of secession. One of the most attractive features of the Soviet regime has been the substantial cultural autonomy afforded to the constituent republics, particularly in matters of race and language. But aside from this, the autonomy of the several states is largely illusory and Soviet federalism has little resemblance to the federalism of the United States and Canada.

In the first place, the powers of the national central government are very wide and extremely vague, thus affording possibilities of expansion by interpretation. In particular, its powers include the final determination of the economic plan and the supervision of its execution. Since the economic plan may involve regulation and adjustment of almost every aspect of life, there is little substance left to the autonomy of the republic. Secondly, the Communist party dominates the governments of the constituent republics and ensures co-ordination of those governments within the system. Thirdly, separatist agitation within the constituent republics has been interpreted by the Soviet courts as a vicious form of counter-revolutionary activity, i.e., treason. Soviet federalism is not, in any significant sense, a mitigation of the overwhelming concentration of governmental power.

Substantially the same can be said of local government in Russia. There are numerous units of local government in each of which the people elect a governing council which

has authority over a considerable range of local affairs. However, the Communist party is active in guiding the elections, and the requirements of the economic plan which are fixed by the national government limit narrowly the alternative courses of action open to the locally elected council in many matters. In Germany and Italy, the dictatorships co-ordinated local government as they co-ordinated everything else. Popular election of local councils was abolished and local government committed to a party boss who was responsible to the central government and not to the people of the local community. As in France, local government in Germany and Italy had always been subject to a large degree of direction and supervision by the central government. Under the dictators, local government was completely subjected to the central department of the interior which might intervene at any time in any way it thought fit.

CONCLUSIONS

It can be seen, therefore, that while liberal democratic government is marked by a division of power, both functionally and geographically, among a number of authorities which operate as checks on one another, the one-party dictatorship is marked by an utter concentration of power. The power so concentrated in the hands of a small clique of party leaders is not checked in any way by judicial institutions and it is no longer contingent on the party winning the next election. For the one party takes no chances on losing the next election. The only way to break its rule is by revolution. And revolution is almost impossible because all unofficial organizations which might become centres of opposition are stamped out. The secret police are everywhere and every meeting which lacks official blessing meets under the shadow of the concentration camp.

There are many who say that the democracies are travelling the totalitarian road. They support their view with a variety of arguments. As far as governmental structure is concerned, they point to the trends in democratic government which have been discussed here and insist that the general

pattern of government in the dictatorship is, in the main, a projection of these trends. This view is not entirely groundless. It is clear enough that liberal democracy cannot survive where power is concentrated as it is in the dictatorships. Yet the democracies are still a long way from such a concentration of power and it is open to them to halt these trends before they reach the monolithic state. There was in 1939 considerably more concentration of power in the democratic governmental structure than there was in 1900 and this is not without its alarming aspects. But it is not necessarily beyond human ingenuity to find improved methods of control as counterpoises to the aggrandizement of the executive and the growing predominance of national over local, and state or provincial, governments.

This is the crux of the matter. If the government is going to perform many positive services for the community, there must be greater concentration and less dispersion of power than that which marked the age of laissez-faire. But wherever power is lodged, devices are needed to ensure that it can be called to account. The more power is concentrated, the more nicely calculated the means of controlling it must be. The elaboration of new and more effective controls has not kept pace with the growing concentration of power. More thought must be given to such controls in the immediate future. And much caution will have to be exercised in adding still further to the positive functions of government.

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